

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
JUNE 5, 2007

RIVERVIEW CENTER
110 HARBOR DRIVE
MUSCATINE, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Darrell Hanson at 9:00 a.m. on June 5, 2007 in the Riverview Center, Muscatine, Iowa.

COMMISSIONERS PRESENT -

Suzanne Morrow
Darrell Hanson
Mary Gail Scott
David Petty
Henry Marquard
Charlotte Hubbell

COMMISSIONERS ABSENT

Susan Heathcote
Ralph Klemme

ADOPTION OF AGENDA

Darrell Hanson said that we had a 1:30 appointment relating to the Mid American Referral to the Attorney General, but it has been withdrawn. Instead of that appointment we will try and set that time for when Dave Sheridan needs to talk so we will just switch that to that. Then we'd just like to announce for the benefit of any members of the public that are here for the public participation segment, we'll do that after the director's remarks rather than wait until 10:30; however, if we do have someone that comes late and comes closer to 10:30 and still wishes to make statements for the Commission we will make time for them since they were told that 10:30 would be the time. Then after public participation I'd like to move Agenda Item #23 and #19 up and take those up right after public participation. There will be several people here probably who are interested in those items and that might help them get on the road sooner if they want; and then proceed through the rest of the agenda as printed.

Charlotte Hubbell asked that the recent article of the biofuels, ethanol plants in the Des Moines Register be discussed during General Discussion.

Motion was made by Charlotte Hubbell to approve the agenda. Seconded by David Petty. Motion carried unanimously.

APPROVED AS AMENDED

APPROVAL OF MINUTES

Motion was made by Henry Marquard to approve the minutes from the May 1, 2007 minutes. Seconded by Charlotte Hubbell. Motion carried unanimously.

APPROVED AS PRESENTED

DIRECTORS REMARKS

Rich Leopold said thank you for the people in Muscatine that have hosted us here. We felt very welcome and have learned a lot in the tour yesterday and I'm looking forward to taking a little walk here at lunch down at the river front. As far as my input, I have been doing a lot of work lately with the Governor's Office; they are setting their agenda for next year. They are creating Governor's Enterprise Teams for strategic planning for this June, what we're going to do, and the governor has been focusing on three different areas: the power fund and it's development, looking a lot at electrical production within the state of Iowa, a transportation sector, biofuels, and also the global warming commission and what that's going to look like within the Department of Natural Resources. The second topic with government and not-for-profits and moving into the public sector, and there's a lot of low-hanging fruit there so we are excited about what can be done. The last category is air, land, and water all kind of grouped together. I've been working selling people one-by-one within the governor's staff on the sustainable funding for Natural Resources issue. The recommendations of \$150 million a year for at least 10 years out through a number of funding mechanisms or maybe one silver bullet and working with the Governor's Office to see that might be one of his major initiatives for this next year. I'm hopeful. We're also talking a lot about the state water plan. I think since our last meeting or maybe it's pretty close, Bill Ehm has been appointed as the special assistant to my office to work on water policy and coordination and creating a state water plan that looks at both quality, quantity, contingency planning for flood and drought, prioritization of our lakes and streams; anything that has to do with water. Not just looking at fiscal cycle or an election cycle, but looking 5, 10, 50 years out. It's starting internally within the DNR first because we have a lot of different bureaus that all have to do with water and then very quickly moving into the external mode, working with the Department of Economic Development, Department of Agriculture and Land Stewardship, federal agencies, no-match resources, conservation service, EPA, others, vested stakeholders, NGO community, production agriculture industrial groups, so excited about the progression of this. It's going to take a while, it's going to be a lot of work, but it's had a warm reception almost everywhere that I've talked about it. I'm looking forward to doing that.

A few other things that have been happening: the Honey Creek proposal is up for bid again and we anticipate that coming in a couple weeks. We'll also be bringing on another full-time staff person to work on the business end of making Honey Creek real and I'm encouraged by that. Very shortly we'll be creating some type of an air quality livestock facility blue ribbon commission. I've been working very closely with Secretary Northey and this last week actually we went and visited a turkey facility up by Ellsworth, Iowa where Iowa State University is doing a pretty big study. We're going to be pulling together the best of the best as far as agency people, region scientists and not so much discussing the problem, but looking toward solutions; focusing world wide on what's being done here and there and everywhere and what could we do to take care of whatever problems are out there.

Internally within the DNR we are talking a lot about strategic planning. We've been doing some work with environmental indicators and looking how to streamline our strategic plan with the Governor's strategic plan with the different bureaus strategic plans. Using environmental indicators has some real world, year-to-year things that will be able to show progress or places where we need more work and then also working with our internal strategic plan to make sure they align with the environmental indicators. In a couple weeks here there is going to be a water quality kaizen event which is going to be down in Kansas City and quite a few of our staff are going to be involved with this. It is focusing on water quality standards and the process by which we pass water quality standards. It's a very laborious, cumbersome, complicated process and it's one of those things that is us and our stakeholders, it's Kansas City EPA, and it's Washington EPA. And, it's not just EPA, you have Corps of Engineers, Fish & Wildlife Service, and others that weigh in on this, too. So trying to create a process that's more

efficient in getting us our water quality standards so we can get them on the ground and running a lot quicker than has been.

The only other thing I'll mention is that Governor Culver vetoed the Missouri River bill. The Missouri River bill was a complicated bill and the message of the veto wasn't so much a yes or no, it was a wait. The part of the bill that we had a problem with was it used to be the Missouri River had this large coalition of states involved that would make decisions with the Corps of Engineers on the Missouri River. Every state got one vote. In Iowa the DNR and then a group of others and they had to be unanimous would put together and have one vote. In a lot of these other states, they wanted the ability to dissent within their state because most of the other states involved have a Department of Natural Resources, Game, Fish & Parks, Forestry, that kind of thing and an environmental services side like what you do here. What we talk about here, air quality, water quality, landfills, things like that. They wanted the ability to vote dissentingly within the state and so now every state has two votes. Well, coming to Iowa, if that's apples to apples, then we should get two votes, the DNR should get two votes. It was decided we didn't want to do it that way, we wanted a larger opinion. That's fine. So the DNR gets one vote and then the other vote was going to be between the Department of Economic Development, Department of Transportation, and a few others. All executive branch appointees except for the Department of Agriculture and Land Stewardship and it was stipulated that it had to be unanimous before we voted anyway so our vote was 2 or our vote was zero. The problem with that is that the Governor can tell me how to vote and the governor could tell all the other executive branches which way to go. The Secretary of Agriculture, therefore, would have a default veto power over anything we did on the Missouri River. It's an important opinion and we want to incorporate that but giving anyone that much power was something that we were concerned about plus a big thing we wanted to do was to just look at the Missouri River. I've been working a lot with Mr. Tramontina who is the director of the Department of Economic Development and there are significant legacy issues on that river that have to do with barge traffic and ag land, river bottoms, and that that we need to consider, but at the same time there is a lot of transportation and recreational opportunities that really don't have a lot of weight right now. We want to look whole Missouri River Valley and make sure that what we're doing as a state is promoting the best use of all of the different functions it performs. So I think we have made more work for ourselves, now that it's summer, and between us and DED, and maybe a few others, pulling together some type of commission again to look at the Missouri River and how we decide what we do on the Missouri River so it best serves the citizens of Iowa and the natural resources that exist there.

Dave Petty: Just one comment: I think it's great that you are doing the water quality planning and Mr. Ehm heading up the water policy, good selection.

INFORMATIONAL

PUBLIC PARTICIPATION

Henry Marquard recognized the presence of State Senator Jim Hahn from Muscatine.

PAM MACKEY-TAYLOR: from Marion and today I'm representing my husband, Wallace Taylor and his law firm. I'm not a lawyer but I do have a statement I'd like to read on his behalf. I'd like to talk to you about the Cottonballs Site #1 in Winneshiek County. This facility reaches a sinkhole 50 feet from the building site and we'd like to have the board use it's agency discretionary rule to take action in

this case. My statement will describe the chronology of events of the sinkhole and the impact on Meyer Spring.

The grading on this site began in August 2005. About September 15, 2005, the grading contractor dug into rock on the east end of the site for a drainage ditch.

On September 18, 2005, a substantial rain occurred and on September 19, the pond fed by Meyer Spring was discolored. Mr. Meyer immediately filed a complaint with the DNR.

On September 23, 2005, DNR personnel came to the site, but nothing was done.

DNR personnel from Manchester planned to visit the Cottonballs site on October 12, 2005. On October 10, five truckloads of rock were dumped into the drainage ditch on the east end of the site, which we believe is the location of the sinkhole.

On November 7, 2005, DNR personnel from Manchester came to visit the Cottonballs site again. They first met with Mr. Meyer and noticed that Mr. Meyer's pond was cloudy.

On November 10, 2005, DNR Field Office #1 sent a letter to Cottonballs noting that manure from Cottonballs' operation may reasonably be expected to cause pollution to a water of the state. The letter required Cottonballs to do a number of things, including locating manure cleanouts and manure storage away from the east end of the site. This requirement was obviously to avoid having manure near the sinkhole.

Between November 2005, and March 2006, Mr. Meyer contacted several DNR employees and the EPA about this problem.

On March 29, 2006, Chuck Corell called Mr. Meyer and said DNR had done all they could do.

On April 10, 2006, DNR personnel from Manchester visited the Cottonballs site. Mr. Meyer was also present. Nothing was done. Tom McCarthy said that with the area grassed over there should be no problem, and that the DNR was not going to do any dye testing. Mr. McCarthy told Mr. Meyer to inform DNR of any further pollution events.

On April 16, 2006, it rained and Mr. Meyer's pond became very muddy. Mr. Meyer called DNR Field Office #1, but was told that DNR staff would not investigate.

On September 10, 2006, it began raining for a couple of days. Mr. Meyer called Field Office #1. He was told that DNR had done all it could do.

On April 19, 2007, Cottonballs piled manure on the east end of their site, right where we believe the sinkhole is, in violation of the previous directive from DNR. Mr. Meyer called Field Office #1, and after considerable conversation, he finally persuaded DNR personnel to come to the site. Nothing was done, except to encourage the manure to be moved to another location. A test of the water in Mr. Meyer's spring showed a total coliform bacteria level of 165.2, over ten times the normal limit.

I have Mike Meyer's comments; Mike isn't here, but his comments are: Bob Watson spoke with Wayne Gieselman by phone on Friday, May 25, concerning what would be in the report to you about the Meyer Spring situation. Wayne stated there would be three items addressed in the report but none were about

our main contention that a sinkhole, with a direct conduit to the Meyer Spring, had been created during the site construction. We find this disconcerting. The water is used by Mike Meyer in his retirement cabin and in a cow/calf operation and we are very concerned by the lack of action by the DNR.

JOE ROBERTSON: representing the Solid Waste Management Commission of Marshall County.. I want to thank you for the opportunity to present to you today. I'm here to speak to you about Agenda Item 19, Chapter 113, Sanitary Landfills. As I said my name is Joe Robertson; We operate a landfill in Marshall County that serves about 40,000 people. My main point, I want to thank the Department for the extensive rule-making process on Chapter 113. I've been involved in it basically from the beginning back in 2002 or 2003 so it has been a long arduous task and a lot of work but I do have some concerns about final rule as presented to you today and my main point of concern is the movement of the point of compliance to within 50 feet of the solid waste rather than 150 meters as prescribed in subtitle D federal rule. I would like to see the 150 meters maintained so that we are consistent with the federal rule. It accomplishes many things that makes a level playing field for all states in regard to the federal rule. It gives a facility room to remediate corrective action that is documented. In the responses to the final rule there was a study presented by Geosyntec which had numerous comments regarding the proximity of the point of compliance to the facility itself and one of the comments they gave in there regards to magnitude and cost of remedial action to try to accomplish them in only a 50-foot spacing. I agree with their comments on that matter and want to ensure that as a facility we are able to evaluate our impacts on the land and able to spend our money on areas of greatest environmental return. Not that we wouldn't want to address these documents releases; of course we want to address these documented releases. We have been on a subtitle D liner at these facilities since 1995, we are confident that it's working well and we're happy that we made that decision 12 years ago. We just want to be able to test our waters at the federal point of compliance and respond with corrective action in that spacing. We realize that the interpretation and final implementation of the rule is going to be the biggest impact on us and we are confident we can work with the Department in that regard but we remain concerned about the moving of the point of compliance to within 50 feet of the solid waste. Again I thank you for your time today and opportunity to speak before you.

JULIE KETCHUM: My name is Julie Ketchum and I'm Director of Government Affairs for Waste Management. Thank you for the opportunity to comment today. I'm commenting on Iowa 567 Chapter 113 for municipal solid waste landfills. The EPC cannot approve this rule. The June 4 rule that is up for approval today differs significantly from the rule that was placed on notice of intent and the rule making of December 6. That means that there is a procedural defect in this rule making. This rule making violates Code 17A of the Iowa Administrative Code making the Iowa DNR and this Commission subject to law suit. Because the June 4 rule is significantly different than the December 6 rule the June 4 rule can only be brought to this Commission today for approval for the notice of intent to enter into the rule-making process. No full and fair consideration of public comment was provided on the June 4 rule. The changes that are in the June 4 rule occurred within the last six weeks. No regulatory review was conducted on the June 4 rule. Secondly, the rule violates Iowa code 17A.4, subsection 3 which establishes three criteria for substantial compliance with the rule-making process. Only one of these three criteria must be met but Waste Management believes all three have been met. One, the extent to which injury resulted, \$25 million in damages to Waste Management alone. Item 2: The extent to which the defect could have deprived anyone of the opportunity to participate in the process. The changes in the rule occurred in the last six weeks with no opportunity for public hearing. Item 3: the extent to which the defect was an isolated occurrence. There are sections of the rule that affect specific Waste Management design sites. For the record Waste Management opposes this rule making for the following reasons: First, EPA determined that the 1997 Iowa rule was adequate. The

existing 1997 rule meets federal Subtitle D requirements and Waste Management sites were approved by the director of an approved state. We have workshops and documentation from Iowa DNR stating that Waste Management sites are Subtitle D equivalent. Iowa DNR has continued to renew our permits and has done so since the 1997 rule was determined to be adequate. Lastly, we believe the existing 1997 rule states in chapters 113.7 item 1 that sanitary disposal projects designed and constructed in accordance with rules in effect at the time of construction shall not be required to be redesigned or reconstructed due to subsequent rule changes. Therefore, we maintain that this rule does not include our Waste Management sites. Again, this commission cannot approve the June 4 rule because it was not put on notice of intent to enter into the rule-making process. It did not allow for public input and it is illegal for you to give final approval. Written comments I will provide.

Henry Marquard remarked that this position would seem to create a kind of an endless circle every time we would send out something for rulemaking we would get public comments then you would have to go back to a notice of intended rule-making to modify the rule to pick up the public comments and it would just be an endless circle of doing that. Isn't it adequate that the rule we have today is based and takes into account public comments that we've received from not only the public but the industry. From looking at the rule package my recollection was there was something like 70 pages of public comment and response that were received and responded to by the Department.

Julie Ketchum: With all due respect we do have public notice, we have to put on notice of intent to enter into rule making if you change the rules substantially and what happened was a rule went on public notice, notice of intent, in December. There were public hearings held on that particular rule. There was a regulatory analysis showing economic impact on that rule. The June 4 rule that came out after these public hearings, yes, they did respond to the public comment but federal administrative code and almost every state administrative code requires more if the rule changes substantially. In the Iowa code there are at least three criteria that demonstrate that it is not substantially compliant with the rule-making process and my position is that this rule is not substantially compliant with the rule-making process.

Darrell Hanson: Is there a substantial change that you can cite to illustrate a major substantive change that would be unexpected or people would not have had a chance to comment on?

Julie Ketchum: There are many. The main ones are items 113.2, item a to c;

Darrell Hanson: I don't know them by the number. Just tell me, describe the change.

Julie Ketchum: This change affects municipal solid waste landfill units that have a basal composite liner, an outside slope liner that has been previously approved by Iowa DNR and has been approved by EPA throughout region 7.

Darrell Hanson: What's the change?

Julie Ketchum: The change is that this change in the rule requires us to close down in three years. We've submitted implementation plan for how we get in compliance and this rule gives us three years and at our site we will not reach final contours and final grade and we have spent \$10 million putting down the base liner.

Darrell Hanson: In the original rules it's your interpretation that you would not have had to close in three years?

Julie Ketchum: Not under the 1997 rule.

Darrell Hanson: Not under the rules that went out for comment?

Julie Ketchum: Correct.

JERRY NEFF: I'm from Pleasant Valley, Iowa and I'm the chair of the Sierra Club of the Quad Cities. I'm speaking on behalf of the Iowa Chapter of the Sierra Club. I'd like to speak briefly about three items on today's agenda:

Item #16 is a referral from MidAmerican Energy to the attorney general. The referral is because the energy company violated its air quality permit at the Council Bluffs facility. Although you may hear the facility is relatively new, that is no excuse for violating the permit. We support the referral and encourage you to approve it as presented by the department.

Item #19 is a final rule amending municipal solid waste rules in the Iowa Administrative Code. Part of the rule of this process was to negotiate a new compliance date with EPA to bring all municipal solid waste landfills into compliance. The EPA has given Iowa until October 1, 2007 to achieve compliance with the October 9, 1994 deadline for promulgation of the Resource Conservation and Recovery Act, subtitle D. Today 32 of the 59 operating landfills in Iowa do not have a compliant liner. As we stated in our written comments, we believe 13 years is enough time to prepare to implement rules that will bring our state into compliance with EPA rules. We applaud the DNR for finally taking the initiative to address liner requirements. Although it may be impractical to expect these 32 landfills to comply with the liner compliance by October of this year we believe they should be required to comply with this requirement in as short a timeframe as this as necessary.

Item 22. This is on Use Attainability Analysis, stream water quality. However 15 months ago this Commission took bold action and passed new rules designating all perennial and perennial-pooled rivers and stream in Iowa "fishable/swimmable" an action totally in sync with the goals and intent of the Clean Water Act. You'll be hearing a presentation today about the Use Attainability Analysis, or UAA, process and some sample UAAs that have been completed. Please remember that neither the public, you, nor EPA has been allowed the opportunity to formally review, comment, amend, approve or deny DNR's UAA protocol. We remain very concerned.

You are being asked today to consider examples of the work product without ever having been given any measure of control over the work process. Please do not fall into the trap of believing that your role is to simply determine whether DNR has properly followed their process and that if they have followed their process correctly you must certify and approve the stream designation downgrades they propose. This is not the case at all. Before a stream can be downgraded, the Department must prove two points to your satisfaction, not theirs: 1. The uses being removed cannot be attained, and 2. The uses being removed do not currently exist and have never existed since November 28, 1975. Their protocol and the implementation of their protocol are in fact deficient in both areas. It is now your turn to decide what level of proof you feel is sufficient or insufficient. You get to set the height of the bar. We remain concerned that too many new UAAs coming before this commission at one time would overwhelm you and would effectively limit the public input necessary to properly answer the two key questions: use attainability and the historical occurrence of uses.

JEFF DWOREK: I'm representing Metro Waste Authority based in Des Moines, Iowa. We are the largest public employer and largest landfill in Iowa and we have been recognized at the local, state, federal and national level. I'm here today to support the revision of Chapter 113 and urge you to move forward and approve them in order to continue to move forward. Since 2003 Metro Authority along with the many others have had a significant amount of input with the DNR and we do thank the DNR for allowing that. It has been a long process and we need to move forward and get on with protecting the ground water, at the landfills and implement these regulations as they sit now. The rules, as I mentioned, are moving forward. We are currently constructing a Subtitle D compliant cell. We expect it to be operational by the October 1, 2007 deadline. We've been working several years in that and we look forward to operating a new phase two disposable area. Again MWA supports the DNR's efforts to protect Iowa's groundwater by requiring all landfills to comply with federal landfill operating regulations. We ask you to approve Chapter 113 and all those affected can move forward implementing these requirements and improving Iowa's environment. Thank you for time.

Darrell Hanson: I do have a question. A couple minutes ago we had a representative from Waste Management and I'd like you to comment. Do you feel that the rule as we have it presently setting in front of us is sufficiently different, that the industry would be prejudiced or would not have an adequate input into the rules as it sits here for us to vote on today?

Jeff Dworek: I was somewhat confused with thinking this is different than the existing regulations. I don't believe it is substantially different than the proposed revisions and the changes we made since then have been comments, but I don't believe they are substantially different. Thank you.

HAL MORTON: I'm the executive director of the Des Moines County Regional Solid Waste Commission down in Burlington. I'm also a professional geologist registered in State of Missouri. That's the background I come from. I'd like to talk about Item 19, the revisions to the landfill permit rules. The DNR staff has attempted to justify and strengthen federal landfill rules on two main accounts. Superfund landfills in Iowa were mentioned in the regulatory analysis but every one of these is industrial, not municipal, and they all predate and are unaffected by both current rules and the proposed rules. Contaminant information was provided for several landfills across the state, but all of the data provided so far relates to unlined fill areas that don't conform to existing regulations. Some or all of these areas also predate the existing rules. The rule change today is not designed to fix these old problems; it's designed to replace the current rules regarding new landfill units. There has been no attempt yet to compare the likely cost and benefits of the proposed rule with those of other potential strategies to achieve compliance statewide. The impact analysis provided are based on economic models designed before the proposed rule was even drafted. Not on compliance under the proposed rule, but the same compliance in environmental protection could be achieved more economically in other ways such as fully enforcing the existing rules statewide or by simply replacing the existing rule with the federal language. Unusual interpretations and key requirements and definitions are even stricter than the actual proposed text in the rule. Loopholes or dead ends in the proposed rule text would allow staff to interpret the seepage in violation of any drinking water MCL within 50 feet of the landfill waste boundary as a basis for assessment monitoring and potential corrective action. This problem is further amplified by staff interpretation of the term aquifer to include the impermeable glacial clay soils that we have across many parts of the state. No ground water anywhere in the state can meet this MCL standard whether or not there is a landfill there. Staff indicate such exceedances are made by measuring background levels; however establishing background levels requires monitoring the geologic unit because measurable flow rates and it is continuous between the various monitoring faults. Glacial clay soils have little if any flow and their slightly permeable zones are not continuous or predictable between wells. The flow rates or conductivity are very low. EPA indicates upgrading and downgrading

comparisons are not statistically accurate so wells must be compared against themselves. Consequently every natural fluctuation of any perimeter within a single well could come suspect with false positives becoming more numerous and reliability of the detection of the monitoring system diminished. DNR staff has even used the lack of ground water flow with the common clay soils as a rationale for reducing the federally allowed point of compliance by 10 fold. Constructing a clay barrier is a common engineering control to contain contaminant quotas. Such a barrier already exists in the glacial clay horizons at most Iowa landfill sites. This should be cause for environmental security rather than panic. If there is little or no flow through the clay landfill contamination will never be detected at 150 meters which is the federal standard. Isn't that the point? State and federal law already prevent multiple use of ground water at landfill sites and they effectively preclude its use within 1,000 feet of every landfill. Shouldn't nondetect at that distance still within the landfill boundaries be sufficient to catch the groundwater from any potential releases? Why then require nondetect at 5% of the federally allowed distance? We can all support requiring full implementation of subtitle D but justification for exceeding subtitle D has not yet been provided. The proposed rule goes much too far and EPA's known concerns can still be addressed by October 1 without this very expensive rule change. I'm not concerned about 32 landfills that don't have liners. We all know those need to be on liners and need to be upgraded. I'm concerned about the half, slightly more than half of the lined landfills that will be thrown into noncompliance with this proposed rule. A variance of this rule will have a significant impact on governments regional solid waste planning system. I think we are jeopardizing that and we are looking at substantial increases in waste dumping and in exportation of our waste out of state, in which case we lose control of it and the revenue streams to fund. Thank you very much.

Charlotte Hubbell: Mr. Morton, you know I was not a commissioner when these rules were proposed but, did you by any chance attend any of the meetings with DNR on these changes?

Hal Morton: Yes ma'am. I've been involved with DNR during the whole process.

Charlotte Hubbell: And you've raised these issues with DNR.

Hal Morton: Yes ma'am.

Charlotte Hubbell: Okay.

Henry Marquard: Hal, I have a question. I just want to clarify something. You made a point right after making a point about not being concerned the 32 landfills that don't have liners; I'm not clear about the point you made afterwards. Do you have an estimate on your rules about how many existing landfills would be in noncompliance?

Hal Morton: I don't have the table with me but DNR created such a table about a year ago and actually I think the 32 unlined landfills is a slight misinterpretation of the data. I think some of those landfills have both lined and unlined areas. But I believe that there are 30 or 31 landfills in the state that have liners that are approved by the DNR and in conformance with subtitle D. Of those 30 16 or 17 of those have what are called alternative liners. They will not be allowed to complete filling in those fill areas in those cases. So in our case in Burlington we are looking at a loss in excess of 30,000 cubic yards of already permitted space. We are not the only ones affected by this. I believe that there are slightly more than half of the lined landfills in the state that will be affected with loss of permitted air space and it's not based on performance issues with those areas.

Mary Gail Scott: What is the loss based on?

Hal Morton: Based on the change in requirements. Basically the new rules force you to use a particular liner design. Flexibility is allowed, however, several comment letter that have come out in the last six months to various clients around the state indicate there is really not a willingness to approve any other alternative designs. I think the precluded partly mainly by this 50 foot point of compliance that's used for modeling as well as monitoring and I don't think it's possible to get an alternative design to pass if you are limited to modeling 50 foot from the landfill. The models all use an infinite timeframe. I don't believe a composite liner would pass that test either if they were required to do modeling at that same assumption.

Mary Gail Scott: So these are areas that you have gotten approved as landfills and have already lined them with a composite liner?

Hal Morton: Yes. No, with an alternative liner.

Mary Gail Scott: So what you're saying is that you won't be able to put in a second liner or an approved liner and therefore will abandon that area that has already been permitted and lined?

Hal Morton: It would be infeasible to construct a composite liner over waste that's in a unlined cell.

Mary Gail Scott: So you already have those cells in use?

Hal Morton: Yes.

Mary Gail Scott: So under these rules what do you have to do to close them?

Hal Morton: We will have to, well, close them, but that also means that we will have to fill that air space with something besides waste. Our design won't work otherwise.

Mary Gail Scott: You're saying in Iowa that there is no definition of aquifer and so it's up to the individual?

Hal Morton: There is a definition of aquifer and the text of the definition looks very similar to other states but the staff interpretation has been that the glacial soils that we have qualify as an aquifer.

Mary Gail Scott: How do they define it here just in general terms? Is it a flow collection?

Hal Morton: I don't know the exact language. It's a geologic or soil unit that is saturated with water.

Mary Gail Scott: It's not a flow. Not if you sink a well you can get 100 gallons a day, or 500 gallons a day.

Hal Morton: There is a term in there that says usable quantity of water. DNR staff explained that five gallons a day is considered to be usable. Again, the text isn't what's as scary as the interpretation that we are hearing.

Mary Gail Scott: But you're both claiming that in a tight clay situation you're not going to have movement of contamination and saying that if we go to 50 feet outside of your landfill we're going to find contamination such that it won't allow you to continue to operate without specific measures.

Hal Morton: What I'm saying is that we're going to find specific significant increases, we're going to find deviations from MCLs that are naturally occurring.

Darrell Hanson: And MCL means?

Hal Morton: Maximum Contaminant Level for drinking water standards. What I'm saying is that those won't be indicative of leakage from the landfill necessarily. Those are things that would occur at any site whether or not there is a landfill there.

Charlotte Hubbell: But are we going to find them at 1,000 feet as well as at 50 feet. I mean what you're saying is the contamination is not going to go anywhere when it's in tight clays.

Hal Morton: Right.

Charlotte Hubbell: But if we put a point of compliance at 50 feet we're going to find stuff. Why don't we go to 1500 feet? But now you're telling me that pretty much regardless of where we put it in this tight clay soil we're going to find contamination. So 50 vs. 1000 vs. 1500.

Hal Morton: The closer you put it to the landfill the more logical it's going to be to presume before further testing that the landfill's to blame and we're going to go in and spend a lot of money and then discover, oh, wait a minute this is naturally occurring. When it's further away from the landfill as allowed by subtitle D, you're less likely to jump to that predetermination. You're more likely to look at the quality of the water at the location that it's at. You already have monitored wells at 50 feet. I have no problem using those as preliminary indicators for our purposes. What I'm wondering though should those be put at the point of compliance rather than moving the point of compliance into where the monitoring wells already are. I think that's the point. We're trying to protect groundwater from anybody that might overuse it.

Charlotte Hubbell: Are you talking about points of compliance at the property boundary?

Hal Morton: It needs to be within the property boundary it can't be at the property boundary.

Charlotte Hubbell: So you're talking about flexibility of where those are located.

Hal Morton: About 150 meters but they still need to be within the landfill property. I think they have to be within 50 feet at least away from the property boundary.

Charlotte Hubbell: But I think also that arguing that an industrial landfill is a totally different animal than a municipal landfill because, let's admit it, hazardous waste goes into our trash every single day and that's allowed by law and that goes to a municipal landfill and therefore hazardous materials can and do leach from municipal landfills. It's just known and it's been accepted. It's at much lower levels, the concentrations won't be as high but you can get those out of municipal landfills especially older ones.

Hal Morton: That's true and I'm not concerned, again the rules are not directed at older ones. These are directed at new ones.

Henry Marquard: I appreciate you've been kind of a regular attendee and commenter at our meetings and I appreciate that. The alternative design that you're specifically talking about at your facility is what?

Hal Morton: We have an under drain for groundwater diversion and then we have four feet of compact clay and a leaching collection system on top of that.

MARVIN MEYER: I'm from Ossian, Iowa. I'm here to talk about my water supply which is being contaminated. Bob Watson and I spoke with Wayne Gieselman by phone, Friday, May 25, concerning what would be recorded about the Meyer Spring situation. Wayne stated there would be three items addressed to report.

We find this disconcerting because Wayne said in his comments at our last meeting that the DNR agreed that an aquifer had been breached. We were told early on that monitoring and testing of the spring was my responsibility and not the DNR. We have documented over 15 pollution events this spring. The documentation has been given to both the director's office and Region 1 office. It has been directed to this commission also. When manure was piled next to the sink area the E-coli. went from nine to 165 in the spring. Although Wayne said the state allows swimming and water to the count up to 230. This spring is used for residence and cow/calf operation. The ground water protection act said that it is illegal to have your water polluted and illegal to pollute water. The DNR is not dealing with the main contention that a sink was created with direct conduit to the Meyer Spring. We assume these facts will once again be ignored by the DNR in its report to you. There is still time for this board to use its authority under the agency discretionary rule to take action in this case.

Henry Marquard: Wayne, I'd like to have your response to this. It seems, if I understand from the last couple of meetings when this has come up that the issue is serious. Is it a factual question of (1) whether or not there is a sink hole and (2) is there a factual question of whether or not the sink hole is acting as a conduit to pollute the spring.

Wayne Gieselman: Yes, I think both those things are (Background noise affected tape) there are some real issues about whether this is a sink hole or not. There is no factual dispute about the fact that there is bedrock exposed during the excavation for this poultry facility. The poultry facility does not need a permit under any of our rules or the state law. The facts that Mr. Meyer just gave you as far as we've seen are also correct and are not a violation of state water quality standards from any of the reports from Mr. Meyer. We have X number of issues at this site concerning solid waste and certainly have an issue with the location, in fact he's not supposed to be stockpiling poultry liter there on the site and they assured us they would not do that. Our way of dealing with that is slow and cumbersome but we have a referral package coming from Field Office 1 into legal services. It has not made it to Ed yet that I'm aware of but I know it's being prepared. We sat down with all the written documentation on our site visits and what we found at that location so I think that is the best summary I can give you and I think there are some distinct factual discrepancies here that we have been trying to look at.

Charlotte Hubbell: Can I ask a question? If this referral is forthcoming does that give us an easier entry onto the land legally? Do we still have to get a court order to do any dye testing?

Ed Tormey: We still have the authority to go on site at a reasonable time stating our purpose; we may not need a search warrant.

Charlotte Hubbell: I guess the point is if there is a referral you will review the contents of the referral and then decide if there are issues that pertain to the pollution of this spring water that would allow you to seek a search warrant for dye testing?

Ed Tormey: From my understanding of the referral, the referral is about issues related to manure storage.

Charlotte Hubbell: Does it make sense to kind of put an end to this question of whether there is a conduit there? Isn't it possible with all the rocks, dirt, and sand he's put in there that the owner of this Cottonballs has created, has plugged the hole and it's more of a seep now rather than flushing it through the sinkhole? Wouldn't it make sense to do dye testing just to get it off the table once and for all? I don't know how expensive it is.

Wayne Gieselman: Potentially if we did that I suppose it could show that there is a direct connection between the sinkhole and Mr. Meyer's spring. What it won't show is if there are other connections from other sinkholes in the area to Mr. Meyer's spring.

Charlotte Hubbell: Then we have to address that issue, but at least we can eliminate one possible source.

Rich Leopold: Half a step backwards, it's illegal under their permit to stockpile, right?

Wayne Gieselman: They do not have a permit.

Rich Leopold: They do not have a permit to stockpile.

Wayne Gieselman: They are slightly under the permit threshold. If they stockpile they are going to have issues with us because they are not to be stockpiling without a permit. And, they don't have a permit to do that. And we deal with that in the referral process.

Rich Leopold: Right. And that is the part of the referral package we have is they said they weren't and they have been and because of that there are these questions on whether there is a sinkhole or not but half a step back from that they shouldn't be stockpiling there anyway.

Charlotte Hubbell: But I guess I'm just wondering if the stockpiling could possibly be causing the coliform bacteria count to go up, possibly. I mean, we won't know unless we do dye testing. I don't know how difficult it is, how expensive it is. I know that the owner does not want it to be done which makes me a little suspicious. The owner has not consented to entry onto the land to do this dye test. I think the issue isn't going to go away until we can confirm one way or another whether there is a sinkhole there.

Wayne Gieselman: There are private legal remedies for some of that. There is some distinction between what's the responsibility is and you're not showing violations of the water quality standards and I'm not disputing anything Mr. Meyer is saying about what happens to his spring when it rains. We have to make some judgments about how we use our resources.

Darrell Hanson: If the stockpiling issue is taken care of, the issue of whether there is a conduit there or not becomes pretty much an academic issue, right?

Dave Petty: Mr. Chair, I think this is a possible referral, I think the public comment is fine, but at that point I think we probably ought to leave it lay as commissioners until it comes to us as a referral letting the DNR do whatever they feel is appropriate, because if at some point it comes to us as a referral then we need to have all the facts presented on both sides in the proper order for us to consider.

Henry Marquard: I'm concerned on the issue of stockpiling that we can take administrative action within the department without a referral. I am a little bit concerned over the fact that we have the ability within our administrative system without going to the attorney general's office to take the action especially against the stockpiling; a clear violation of our rules. That seems to me to have fallen within the situation that we could have taken administrative action at that point in time. A referral to the AG's office is kind of like a bludgeon. Administrative action from us might have been a slap on the wrist in a timely manner that might have done some good.

Charlotte Hubbell: I didn't think this was a referral to the AG; it's a referral to our legal section.

Ed Tormey: We haven't made any decisions yet.

Charlotte Hubbell: Now do you have a timeline? Do you know approximately when this referral will come in?

Barb Lynch: I'm Barbara Lynch, Field Services. There are separate referrals for open burning and the stockpiling issues and I would expect it to come to Ed this week.

Charlotte Hubbell: So it will be on the agenda next month.

Barb Lynch: Not necessarily. Only if it does go to the attorney general and come forward to the commission but at this point this is an internal correspondence for attorneys to move forward with either civil action or if the attorney general is interested and we feel it rises to that level then we would recommend it to go to that.

Darrell Hanson: We have one more card, but before we do that I'm going to hand out some copies of a letter that you folks probably all got except you probably weren't home when you got it because it came to me anyway last night and I was at my office and this came across the e-mail and I told them I would bring it to you for your information. You may have heard from other people the same opinion. It's a person who is concerned about the Clean Water State Revolving Fund Application for Polk County. You can read that and gather what their concern is but since I knew you wouldn't get this before the meeting I said I'd bring it to you.

KARMIN MCSHANE: I'm Karmin McShane and I'm the director of the Cedar Rapids Linn County Solid Waste Agency. I came to go on record in support of adoption of the new rules for municipal solid waste landfills. We operate the second largest public facility in the state of Iowa, the largest expansion project as well as the largest closure of a subtitle D facility. We have been working closely with the Department of Natural Resources on compliance and anticipation of the new rules. I just wanted to go on record and say that we agree.

-----End of Public Participation-----

UNIVERSITY HYGIENIC LABORATORY PRESENTATION – RICK KELLEY

Richard Kelley: As you know you have four contracts before you this morning. Those are four of about ½ dozen contracts the Department has with hygienic labs that provide services to the Department. I'd like to take a few minutes and just give you a little background on the hygienic lab. The hygienic lab was established by the Iowa Legislature in 1904 as the state laboratory. We have approximately 280 people on the staff, 80 of them are in Des Moines. We operate two laboratories; the main laboratory in Iowa City by the Oakdale campus and the satellite lab on the campus at DMACC, Des Moines Area Community College in Ankeny. I know some of you have had the opportunity to tour the facility. The functions of the laboratory are divided between those two facilities and essentially it breaks down to the organic chemistry is done at the facility in Iowa City. The inorganic chemistry is done at the facility in Ankeny. Regular chemistry and public health analysis are primarily done in Iowa City. We do neo natal screening in Ankeny. We do provide a wide variety of testing services which can be divided into three primary areas. The disease control side of things we look at everything from sexually transmitted diseases, HIV, bacterial analysis of drinking water. Environmental category we may be looking at everything from monitoring air quality, water quality, soil, hazardous waste, fish analysis. We do some human tissue analysis for environmental protection. The third category would be the result of the 9/11 and terrorism types of support and anti terrorism types of support, identification of unknowns in response to what we call white powder instances in the state. We provide analysis on a little over 400,000 samples a year, we do over a million analysis on those samples. About 20% of the volume coming through the laboratory is environmental. We provide analytic services to a broad array of clients and provide analytical services to clients in the state of Iowa. For the purpose of regulations you have to be certified to do that. DNR is actually the certifying agency but they contract with us. We do hold certifications from the EPA, NELAP certifications which is National Environmental Laboratory Accreditation Program, certifications from the Bureau of Labor, we hold certifications from Iowa, Wisconsin, California, and Minnesota. We just came up with a certification from New York. These are all very, very important and we shouldn't take them too lightly. The certification for NELAP never takes less than a week. Very, very costly and time consuming. In fact I think there are only two laboratories in the state of Iowa. We provide these services to a very, very wide range of clientele and point this out because I think it's a testament to our expertise; we like to pride ourselves on our expertise. In fact we do provide analytical services on an international basis. We run analysis for the countries of Saudi Arabia and Kuwait. We run analysis from federal level for EPA, USGS, US Attorney General, the CDC, Department of Defense, Regulatory Commission in the state department, states in the US we provide analysis for the states of North Dakota, South Dakota, Nebraska, Missouri, Louisiana; within the state of Iowa we provide services to the Department of Natural Resources plus all of the state agencies that would include the Department of Public Health, Attorney General, Emergency Response, Iowa Department of Agriculture and Land Stewardship, and Bureau of Labor. Then also within the academic community we provide services for the Department of Agronomy, Department of Geology, and then UNI we also work with them on some research projects as well as of course the area community colleges. We have also been working in the past with New York University. Of course we also provide services to a vast majority of public water supply, wastewater treatment systems in the state, and private citizens and industries in the state. And when I talk about the services we provide, it isn't just the analysis, we do a lot of training, a lot of educational types of activities, a little bit of research. So as I say the four contracts you have before you today will deal with providing analysis to the department, staffing, data collection and some training activities. We've had the opportunity for special investigations and studies for certain equipment, and those might not be clearly defined within the contract itself. We hope you will support and approve those contracts as they come forward as they are essential to the department for meeting its mission as well as our own mission to the people of Iowa. As you know I am here most of the time at the commission meetings and I will again offer an invitation

for any of you who have the opportunity to come and tour the laboratories and services we provide. Thank you very much.

Henry Marquard: I was in Iowa City a couple of weeks ago and was reading an article in I think it was the Daily Iowa Press Citizen. As I understand, does your lab have a problem with the director.

Rick Kelley: That's correct.

Henry Marquard: She has made some fairly significant allegations of mismanagement on the part of the laboratory.

Rick Kelley: Actually, I made a misquote. The laboratory is not involved in the litigation, the University of Iowa is involved in the litigation and I believe if you take a look at her accusations they are actually against the University of Iowa and not the laboratory.

Henry Marquard: That's what I wasn't sure was if the allegations were directed against the University or against the laboratory.

Rick Kelley: To the best of my knowledge, unless I missed something, she's never said anything bad about the staff of the laboratory or the work done there.

INFORMATION

SOLID WASTE ALTERNATIVES PROGRAM – RECOMMENDATIONS

The Department received eleven proposals requesting \$461,185 in financial assistance, for consideration during the April 2007 round of funding. All eleven (11) projects were selected either for funding or additional consideration. If all are approved they will receive \$375,025 in a combination of forgivable loans and zero interest loans.

The review committee consisted of five persons representing the Energy and Waste Management Bureau (Jeff Geerts and Jennifer Reutzell), Iowa Society of Solid Waste Operations (Don Vogt), Iowa Recycling Association (Jeffrey Rose), and the Iowa Waste Exchange (Julie Plummer).

The table below summarizes recommendations by applicant and project type and by the type of award.

Recommended By Applicant Type		# Awards	Award Amount	Forgivable Loan Portion
Local Government		4	\$149,575	\$41,140
Private For Profit		3	\$146,874	\$24,599
Private Not For Profit		4	\$78,576	\$70,806
RECOMMENDED BY PROJECT TYPE		# Awards	AWARD AMOUNT	Forgivable Loan Portion
Best Practices		7	\$296,449	\$65,739

Market Development	0	\$0	\$0
Education	4	\$78,576	\$70,806

TYPE OF AWARD	# Awards	Award Amount	Forgivable Loan Portion
Forgivable loan only	6	\$76,545	\$76,545
Forgivable and 0% loan only	3	\$149,770	\$60,000
0% and 3% interest loan only	0	\$0	\$0
0% interest loan only	2	\$148,710	\$0
3% interest loan only	0	\$0	\$0

At this time, the Department is requesting Commission approval to enter into contracts with selected applicants whose awards will be in excess of \$25,000 subject to satisfactory review of additional requested information, review of business plans, negotiation of budget and match.

A description of each recommended project, the project type, the amount and type of funding assistance is attached followed by a description of other proposals received but not recommended for funding.

Mary Gail Scott: How much money is available each month or quarter or how ever often this goes to be lent?

Brian Tormey: Roughly we budget for about \$800,000 per quarter. It's on the cash flow basis and we have to budget for that knowing how much we are going to be getting in revenue and loan payments.'

Mary Gail Scott: Since we are giving out less than 400 we'll have a million two next time?

Brian Tormey: Again, the budget is about 800,000 around, but if you take a look at what cash is on hand to make those determinations, based on quality of the projects, but the money sits in the account and is available for awards in the future.

Mary Gail Scott: And the money comes from?

Brian Tormey: It's a portion of the solid waste tonnage fee that comes to the department.

Mary Gail Scott: Is wood waste a big problem?

Brian Tormey: Yes. What we're finding is; one of the projects is dealing with gas pipe, so using the wood waste as a fuel product, it's on a pilot basis but, yes, wood waste is something that really should be put in a landfill, but there is plenty of it around so we're looking at funding alternatives.

Motion was made by Charlotte Hubbell to approve the Solid Waste Alternatives Program – Recommendations as presented. Seconded by Suzanne Morrow. Motion carried unanimously.

APPROVED AS PRESENTED

FINAL RULE – RESCIND 567-CHAPTER 113 “SANITARY LANDFILLS: MUNICIPAL SOLID WASTE” AND ADOPT THE FOLLOWING NEW CHAPTER IN LIEU THEREOF AS 567-CHAPTER 113 “SANITARY LANDFILLS FOR MUNICIPAL SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF NON-HAZARDOUS WASTES”

The Commission is requested to approve the attached Final Rule to amend Chapter 101, “Solid Waste Comprehensive Planning Requirements” and Chapter 104, “Sanitary Disposal Projects with Processing Facilities”; to rescind Chapter 111, “Financial Assurance Requirements for Municipal Solid Waste Landfills”; and to rescind Chapter 113, “Sanitary Landfills: Municipal Solid Waste,” and adopt new Chapter 113, “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Nonhazardous Wastes,” Iowa Administrative Code. The proposed changes were published in the Iowa Administrative Bulletin on December 6, 2006 as ARC 5597B.

Chapters 101 and 104 are amended to provide more clarity and consistency with the adoption of new Chapter 113. Chapter 101 is amended by deleting subparagraphs 101.13(1)“j”(4)“1” and 101.13(1)“j”(4)“2.” Both items are included in the new Chapter 113. Additionally, Chapter 104 is amended by adding new rule 567—104.25(455B) to address certification requirements for operators of solid waste incinerators. These requirements were found previously in Chapter 113. Chapter 111 is rescinded and incorporated in its entirety as rule 567—113.14(455B). Chapter 113 is rescinded in its entirety and a new chapter adopted in lieu thereof to implement the U.S. Environmental Protection Agency (EPA) requirements found in 40 Code of Federal Regulations (CFR) Part 258 (commonly referred to as RCRA Subtitle D standards). The Department has concluded that the existing rules for municipal solid waste landfills (MSWLFs) are out-of-date, not protective of the environment (particularly groundwater), and violate RCRA Subtitle D standards. All states must have enforceable standards technically comparable to RCRA Subtitle D, which establishes the minimum national criteria for all MSWLFs. The rule revisions to Chapter 113 are needed to complete this transition to meet minimum federal standards.

The proposed rules in Chapter 113 are based upon portions of the existing rules, the RCRA Subtitle D standards and the rules of surrounding states. Part of the rule revision process was to negotiate a new compliance date with the EPA to bring all MSWLFs into compliance. The EPA has given Iowa until October 1, 2007 to achieve compliance with the October 9, 1994 deadline for promulgation of RCRA Subtitle D in Iowa.

The initial comment period ending January 26, 2007 was extended until March 5, 2007 and an additional public hearing was added to ensure that the public had ample opportunity to submit comment. In total, four public hearings were held: Manchester on January 22, 2007; Atlantic on January 24, 2007; and Des Moines on January 26, 2007 and February 21, 2007. Written comments were received through March 5, 2007. Department staff also met with individual MSWLF owners and their consultants on 25 separate occasions to discuss how the proposed rules will affect their existing facilities. Meetings were held in January with stakeholder groups to discuss ideas for areas of improvement within the proposed rules and in April to review the revisions made to the proposed rules to ensure that they coincided with the public comments that were received.

28 individuals and organizations commented on the proposed rule changes during the public comment period. Overall, there were 163 public comments pertaining to this rule making and the Department made more than 125 revisions that either offered additional flexibility or provided greater clarification to the proposed rules. The responsiveness summary is included as an attachment to this brief.

Furthermore, Iowa Code section 455B.105(3) requires that whenever the Commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the Commission shall identify in its Notice of Intended Action or the preamble of the Adopted and Filed rule making each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirements. In addition, the Commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. Proposed Chapter 113 contains some variation from the federal requirements and addresses necessary areas of regulation not specifically addressed in the federal requirements. The Department has determined that it is appropriate to provide information in regard to variations from or additions to the federal program, regardless of whether such variation is, in fact, more restrictive than the federal language. Therefore, a section is provided in the rule preamble that provides information in response to Iowa Code section 455B.105(3).

The Commission is requested to approve this Final Rule.

Due to the size of the documents, the Final Rule, Responsiveness Summary and Fiscal Impact are available to the Commission on the attached CD and are available to the public at: <http://www.iowadnr.com/epc/index.html>.

Charlotte Hubbell: You say you met with some stakeholders to go over the changes to the proposed rules?

Alex Moon: Correct.

Charlotte Hubbell: What notice did you give to all of the affected parties in the state as to the changes that you adopted.

Alex Moon: As soon as we completed our review of the comments and made what we would call the strikethrough of changes, it's not the version you have before you, it's a clean one, but the one with the changes we put on our website immediately. That was before we had to provide our rules to the commission. We sent notice to, we have what we call list server e-mails of all the interested parties, we sent notice to them letting them know that it was on the website and available. We weren't able to meet with the entire group of people but we did select what we felt were people based on technical comments, 10 to 13 consultants and landfill agencies.

Charlotte Hubbell: When was this notice sent out? The public comment period was until March 1?

Alex Moon: Until March 5. I don't have the exact date. I would say it took us about a month to review the comments and make our changes and that's about the time that we put out the draft strike through and underlined version.

Henry Marquard: Did a representative from Waste Management, I know that they are one of the biggest providers in the state, did they participate.

Alex Moon: Yes.

Darrell Hanson: I think the issue that you probably heard during public comment was not so much that the various parties didn't have a chance to communicate with DNR but that we didn't have the new

process involving a public hearing where the department gives a response and summary to the comments that are made, which then brings us to the question of whether the change in the final draft went out for comment. Was the change substantial enough to trigger a need for a new public comment period. Obviously we wouldn't want to trigger a new public comment period every time you make a change or there would be a powerful incentive not to make a change and would slow everything up and the whole point of public comment period is to see if there are any changes that need to be made, but if the changes get too huge or too unexpected then there is a reason to go back. I think that's the main objection that has been made today, are these changes significant enough to create a process problem. So I guess I'd like to have you address that.

Rich Leopold: Just in short too: I think the nature of the changes is important. When Alex was talking about the changes that have been made thus far, is flexibility. How we changed those to make them more flexible or clarity, that they were unspecified and you needed more verbiage to explain what you were doing as opposed to changing numeric standards or siting differences or things like that.

Darrell Hanson: Obviously the nature of the change I was thinking about, say you have two clearly defined alternative approaches and the rules go out for comment with one approach and the entire public comment period is based on the argument between one approach and the other and the department decides to go with the other approach, it would be silly to say now we have made this huge fundamental change, we have to go out for comment again, because that's what the comments were all about. So that would be what the changes were. Obviously the department feels that it is procedurally proper or we wouldn't have it in front of us.

Henry Marquard: I'd like a comment from general counsel as to what his opinion as general council would be.

Jon Tack: Really the issue here is if it isn't going to be a substantial change, really that is the whole point in the rule-making process, I just had someone call to get my language right so I can explain the concept in general terms: The notice must be sufficiently informative to assure interested person an opportunity to participate intelligently in the rule-making process. That really gets into the issue of people affected by the following rule. Would they have known when the original rule came out they would be affected? Clearly in this case they would. The second issue in this is based on a case, additional notice is not required if the rules are of the same character and logical outgrowth. It's a subject matter issue largely.. You can't go off into a new area and deal with something completely different than what the people who saw the notice. In this case the issues involved were liners, groundwater monitoring, where the monitoring points would be, what parameters were we going to test for. All those things were the same subject throughout. What we did in fact was we made a lot of changes. The one thing the commissioners who were here last fall heard repeatedly and vehemently was not enough input, not enough input, we haven't allowed enough comment. So we had an extensive comment period and we met with individuals during the comment period. Last week we met with Waste Management individually. It's not as if we can't meet with individuals to talk about the rules, the department has an obligation to take this input. To talk to people who want to talk to us, and incorporate those comments into the final rule. I don't believe you can make an argument that we have addressed some area of regulation outside the subject matter of that initial notice.

Dave Petty: That was my only question. I think that is the deciding factor. I have been involved with this from the live stock sector that took years to come down to the final vote. There is an original set of issues that were put out for public comment. Many of those issues were debated, but never was there a totally new issue brought to the table and at some point it was not necessarily a consensus, it was

consensus, not unanimous, of the discussion group, we came to some kind of conclusion. It wasn't 100% happy, but there was never anything completely new pulled out of the sky and added to the new rules, it was an adjustment of the rules, and you're saying that everything that has been changed in this one is the result of comments and discussion and no totally new concepts were added to the rules, is what you're saying.

Alex Moon: I mentioned we held two days of meetings, that was specifically what those were for, to make sure that we had an oversight group to ensure the changes we made were related to the specific comments we received; so that we didn't make a change that we couldn't tie back to a comment that we received.

Charlotte Hubbell: But the allegation has been made that there is, and I didn't write the code section down, but that if there has been a substantial change to the rules then we have to somehow put out another notice and let the public know and let the stakeholders know that these are now the new proposed rules that are up for adoption.

Alex Moon: I could talk specifically to example made earlier by Julie Ketchum of Waste Management. She referenced the proposed rule 113 a, b, and c. What that rule actually does, I wish I could have talked with her before this, but as the rules were proposed before we received the public comments, Waste Management's landfill would have had to stop taking waste in that area as of October 1, 2007. This isn't an issue that is unique to Waste Management as it affects probably a quarter of the landfills in the state. So based on public comments it was suggested that we put in an implementation schedule that is up to three years to allow people to construct a sideslope liner. We want to make sure landfills have a bottom liner in place as of October 1, but there are people who have this sideslope liner concern and we don't want to tell them they are done October 1, we want to give them an opportunity to submit a compliance schedule to either build a new area or put that side slope liner in and that's what that change was meant to do. It was based on public comments we received so if anything it was done to provide greater clarification and flexibility.

Charlotte Hubbell: So it's not your opinion, it's not the opinion of the legal department of DNR that this has been a substantial change that would require, I think you said there were three criteria for when a rule needs to be re-released to the public and it's your opinion that we have met all those criteria.

Jon Tack: I'm not sure that those criteria are specific to when a rule-making is defective.. The citing was given as 17A.4(3).

Charlotte Hubbell: That's the administrative procedure act.

Jon Tack: That's not really, didn't seem to pertain to what we were talking about. Obviously generally it does. The issue is notice. Is this a logical outgrowth of the same character. It clearly is.

Darrell Hanson: Let's put the procedural question aside for a moment and we can always come back to it, and go to some substantive issues: Hal brought up the issue of the clay in the high clay areas. Do you have any response to his arguments.

Alex Moon: Other than to say there are two types of liners to use with two feet of clay and an extra liner over that and we are allowed to approve an alternative that is modeled at a point of compliance that we talked about.

Darrell Hanson: Would you explain modeled at point of compliance.

Alex Moon: I'm not an engineer, but I'll do my best. You are modeling a theoretical release of contaminants. You put in your inputs of chemical constituents.

Darrell Hanson: This is a computer model, a mathematical model so some sort.

Alex Moon: Say you have four or five feet of clay compacted to a permeability of one times ten to the minus seven centimeters per second. At this specified distance looking at the geology of the site, contaminants leaving the landfill won't reach an exceeded limit of a heavy metal for example. So you run this model and that determines whether the input is a threat so the main concern is whether the thickness of the clay that you input is enough. So the discussion is the federal rule allows you up to 150 meters and we specify 50 feet. This is split down the line of people who think that the 50 feet is a good number and those who think we should go back to the 150 meters. When we're looking at Iowa we do have clay soil types where groundwater travels slow. We think 50 feet is a good distance. That might not be a good distance in Arizona where you have sandy soil and they can travel quicker, but we think it is valid for Iowa.

Darrell Hanson: You're saying when you're using those distances that's the distance at which your model will be trying to predict whether contaminants would be showing up.

Alex Moon: Yes..

Darrell Hanson: And for those of us who are still stuck in the English system 150 meters would be like 500 feet?

Alex Moon: Yes, it is 492 feet.

Jon Tack: The federal rule requires that modeling would be the same as the monitoring.

Charlotte Hubbell: Would be the same as what?

Jon Tack: In reality having monitoring wells at the land fill, that has to be where your point of compliance is for your monitoring. So the real debate here is how far away do you put your monitoring wells? And that is how fast in Iowa clay the contaminants will move. And so what we had before was a system where you could model at 492 feet and everyone agreed that monitoring wells needed to be 50 feet as it takes so long to get that far. So you set up a system where it's designed to fail because your model had it that you wouldn't exceed contamination at 500 feet and then you put your wells in at 50 which the liner isn't designed to protect and that was one of the violations of federal law that we had was that they need to be the same.

Darrell Hanson: So the question as we move the monitoring out or the model point of compliance in.

Jon Tack: Right.

Darrell Hanson: Okay. Do we make any allowances for different soil types I'm thinking where the landfill in my county used to be, well it's still there, but where it used to operate, the soil is much sandier than it is in some other spots. Do we make a change there or is it 50 feet?

Alex Moon: It's 50 feet unless there is an obstruction, something that prohibits you from putting it at 50 feet.

Darrell Hanson: Whether it's clay or whether it's sand, it's 50 feet.

Mary Gail Scott: We don't have any provision in there for site specific alternative point of compliance or monitoring?

Alex Moon: We do have a variance within the chapter to allow variances to be submitted so that is in there for any provision.

Mary Gail Scott: And are the criteria for attaining a variance pretty clear?

Alex Moon: The requirements are found in 561 Chapter 10.

Henry Marquard: One of the criticisms I've heard is that these rules limit technological alternatives. I think one of the speakers this morning said one of your basics on your restrict list to a particular type of clay liner. Do you have a response to that? None of the things we've tried over the years is we've tried to encourage the development and use of alternative and new technologies. Are we limited to technologies and techniques available to just one or two?

Alex Moon: I don't think so. I think a lot of what we did was try to put that flexibility back in there. An example is that we have existing groundwater monitoring wells spaced 600 feet apart. One of our concerns is we're missing contaminants so we put the requirement at 300 feet and there was concern that there was no flexibility for alternative well spacings. So based on the comments, in the final rule we are allowing 300 feet or an alternative based on site-specific conditions. One of the notions is that we've taken away this option for an alternative liner and we haven't. I think the thought out there is that an alternative liner is four feet of clay. That's been the case in Iowa but an alternative is a state approved alternative and it can be anything so the argument that we have taken away the ability to use alternative on there, I don't think we have. There is nothing that says that it's supposed to be four feet of clay. That has just been the case in Iowa.

Charlotte Hubbell: We received a letter from Rathbun Solid Waste Commission. They decided to close their landfill on September 30, but now it is going to become a transfer station, so it will be a holding station?

Alex Moon: Yes, they will consolidate waste and transfer by truck to another landfill.

Charlotte Hubbell: I guess they say the purpose of this letter is to request that you look at the final approval rules and take into consideration probably a reasonable period of time after the October 1 deadline to come into compliance with the rules. Are you all prepared to do that?

Alex Moon: Yeah. Roger Caster is the director of Rathbun Solid Waste Commission. He's had a tough go of this. He said they made a decision long ago to stop putting waste in their landfill. They've had difficulty with siting their transfer station. So what's happened is he's in a situation where he hopes to have that building built by October 1, but he may not be able to and what they're asking is to continue putting waste in their landfill, their unlined landfill, until they have that building built. We are certainly willing to work with them. I've talked with him. We don't want to put a rule in place that says no waste in unlined landfill after October 1 and then the first concern we get, we put waste in there because

someone can't meet that date. But I have talked with him and we have some alternatives that he and I are discussing. But there may be other situations like this that we may need to address.

Charlotte Hubbell: How many others? That is my question. How many others around the state do you think, do you have a ballpark figure?

Alex Moon: The ones that are going to a transfer station, most of them did not have difficulty in siting the facility. Those that are trying to build a new cell, I think I talked last commission meeting, we tried to keep on top of those. There is one that we're concerned may not be constructed in time. It looks like they will. If that issue arises or October 1 comes and a disposal area is not ready for waste our intent would be to know this ahead of time as much as we can and work with them to find another disposal location, a nearby landfill that they can take waste to until that area is ready.

Dave Petty: One thing that really parallels this and several other things that we have looked at and I'll use the livestock industry; whatever regulations we come up with, it's real easy for the largest ones to adapt because they have the resources and they have the personnel and no matter what's passed they will survive and come through. The regulations are intended to help everybody but in reality what you do is close out all the small ones and the middle-sized ones and I guess I'm relating this all to livestock but it's the same issues. They have the personnel and finances to do it. When you make the regulations we are trying to improve the environment, however, we are encouraged anyone trying to stop size consolidation, but in reality all you do is expedite it. And the same thing happened in this as did the other because just like this: The big ones will survive and they will be there and the rest will be hauling to them so, I got a whole list of them, parallels that go right along with that. I do think that we need to move forward with this today and it's not going to work for everyone, but I think it's a step forward.

Rich Leopold: If I could comment on that. Philosophically you are right. That's the thing in our back yard is the environmental quality and the performance side of it and sociological aspects are a little bit out of our control. Having an unlined landfill is not a good idea. We need to protect against that, but you're right.

Henry Marquard: Just to follow that up, are we setting, is there any possibility that we're setting up ourselves in a situation where there is going to be a shortage of landfill space after October. Obviously anytime we have a rule, there is a doom and gloom group that comes out and the doom and gloom scenario here is that we are going to put so many small/medium landfills out of business on October 1 or people under the present rules won't expand to meet the additional rules when these are filled. Has there been a consideration of these rules of whether or not we're creating a situation where October of 2008 and we don't have enough landfill space for our needs?

Alex Moon: After next year I think the most recent analysis is that we have a capacity of an average of 30 years. An example: there are some landfills that we don't consider even the largest garbage takers, even some of the smaller ones that have purchased land to build this year but they have designs to handle capacity for 80 years, 100 years. I mean that's not one landfill, that's several landfills. So I don't think when you talk about whether it's capacity, there are few landfills, I know the limitations with the FAA, of course. I'm not sure where this came from But it's a very few number and typically that's not the expansions aren't really a concern.

Motion was made by David Petty to approve the Final Rule – Rescind 567-Chapter 113 “Sanitary Landfills: Municipal Solid Waste” and adopt the following new chapter in lieu thereof as 567-Chapter

113 "Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes". Seconded by Suzanne Morrow.

Charlotte Hubbell: What is the penalty from EPA if we don't adopt these rules by October 1?

Jon Tack: We're in a situation where we are about 13 years behind where we should be on this. Whether they take action this year or at some point in the future, I don't know.

Rich Leopold: Ultimately they have the power of de-delegation. They could take it back and do it themselves if they wanted to. They don't want to do that, we don't want them to do that.

Charlotte Hubbell: But there's no monetary fine involved?

Rich Leopold: No monetary fine except we do get financial block grants that come to help us implement this program.

Charlotte Hubbell: The reason I asked the question, we've heard an opinion today, and I guess I'm wondering if we have time for the legal department to analyze it, if it's necessary, to give us an opinion that it's okay for us to sign it. I don't want to be sued. I don't think the department wants to be sued. It gives us a substantial change that somehow within the administration procedure act or some other provision of law means that we have to start this rule process all over again.

Rich Leopold: I understand that aspect of it. We have legal right here, you know, with Jon and Ed representing our legal department and I think our council is united in saying that we're fine on this. The fact that an entity wants to sue us happens a lot. So we do have the responsibility to do diligence, to make sure that we follow that and have addressed all the concerns. Sometimes the legal culpability is just going to come up and we just have to go through with the actions, but I think our legal department is comfortable with that. We have to do diligence.

Ed Tormey: I'm still struggling to find the standard that was brought up this morning. It's not in Iowa Code 17A.

Jon Tack: I haven't seen that either.

Charlotte Hubbell: Thank you. That's what I want.

Jon Tack: The case I cited from the AG's office: Iowa Federation of Labor vs. Iowa Department of Job Service; a 1988 case, is the rule: Additional notice is not required if the rules are of the same character and logical outgrowth of the prior notice. I don't think that there is even a clear issue here in regard to whether it's the same character.

Dave Petty: Mr. Chairman, I could help you a little bit, probably six or nine months ago we were about at this same point and at that point in time the industry came forth and said that they had not had opportunity to participate and at that point in time we, the commission, kind of indicated, suggested that that take place and that should have had opportunity the last six months to have taken place. There may still be some disagreement amongst the industry and the DNR but just to help you know that should have had ample time to have taken place. That doesn't solve the legal issue but I think we are hearing from some of the people that it did have ample time and some it did not.

Rich Leopold: One other thing with the legal aspects, if we didn't do this we are open to lawsuit too, and probably a pretty serious charge of noncompliance with federal regulations.

Darrell Hanson: One of the speakers said we are way past the time it should have taken to prepare a landfill without liners.

Henry Marquard: I think the records is pretty clear. I recall when this came to us originally. There was discussions and concerns from the legislature, and I think the commission has gone far out of it's way in the two plus years I've been on this commission in extending the public deadline and everything and we've had month after month we've had speakers coming in to us on this issue. I will say though, I know it will be addressed in the general discussion. I am concerned about the concept of having to vote on something; but last Wednesday when I printed it out as a 280 page rule-making package with 75 pages of responsiveness summary. If it hadn't been I'd be really seriously concerned; much more than I am now. If it hadn't been for the fact that I've been on this commission for the year plus that this has come out and I've heard month after month representatives of industry and of course, this is sort of unique too 'cause we have normally; normally we want a rule and let's say there is a pro-environmental group that's saying this is a good rule and there's an industry group that is pretty united in saying this is a bad rule. I can't recall in my time on the commission where we've seen an industry as a whole coming in with; I mean there are groups saying this is great, let's do it. I was a little surprised because my collection of notes was in effect in earlier meetings waste management had in fact endorsed the rule-making process.

Darrell Hanson: It started out with a different language.

Henry Marquard: Well, as I recall. And then other groups that were dead-set opposed to this from the start and I remember one of the earlier meetings that several of the commissioners and myself and Director Vonk kind of directly appealed to the industry: "Can you come in with a single voice" and apparently that's not doable in this case. But I am really concerned with the process that gives the commissioners basically four or five days to digest 70 pages of public comments and response. I'll tell you I'm concerned the public will say this is not the right way to do it as a general rule.

Motion carries.

APPROVED AS PRESENTED

CONTRACT – POLK COUNTY BOARD OF SUPERVISORS - AIR QUALITY PROGRAM

Christina Iiams presented the following: the Department requests Commission approval of a 28E agreement in the amount of \$706,951 with the Polk County Board of Supervisors, for the period of July 1, 2007 through June 30, 2008. This is a decrease of \$8,923 from the prior year due to a change in personnel salary and benefits. This 28E agreement establishes cost reimbursable payments funded by the Title V program fees (\$515,913), 105 federal grant (\$171,038), and 103 federal grant (\$20,000). Polk County has a funding commitment of \$199,770.

This 28E agreement is for the ongoing implementation of the Polk County air quality construction permit, Title V operating permit, and ambient air monitoring programs mandated by the Clean Air Act Amendments of 1990. The Polk County Air Quality Division has a certificate of acceptance pursuant to Iowa Code Section 455B.145, as implemented in 567 IAC Chapter 27.

The duties of the Polk County Air Quality Division staff include reviewing applications and issuing permits for the construction of new air pollution sources, monitoring ambient air quality, performing inspections, and reviewing and drafting Title V operating permits.

The 28E agreement with the Polk County Board of Supervisors is entered into each year. By entering into this 28E agreement each year the Department has been able to achieve successful implementation of an air program within Polk County, as evidenced by the continued attainment of air quality standards in Polk County, the DNR's 2006 audit of the Polk County program, and quarterly reports submitted by the Polk County Air Quality Division under the current agreement.

Charlotte Hubbell: How many agreements do we have around the state?

Rich Leopold: Within Air Quality it's Polk County & Linn County.

Motion was made by David Petty to approve the Contract with the Polk County Board of Supervisors for the Air Quality Program as presented. Seconded by Henry Marquard. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – LINN COUNTY BOARD OF HEALTH - AIR QUALITY PROGRAM

Christina Iiams presented the following: The Department requests Commission approval of a 28E agreement in the amount of \$696,812 with the Linn County Board of Health, for the period of July 1, 2007 through June 30, 2008. This is an increase of \$20,208 from the prior year due to increased costs of salary, benefits, and equipment maintenance. This 28E agreement establishes cost reimbursable payments funded by the Title V program fees (\$552,660), 105 federal grant (\$126,652), and 103 federal grant (\$17,500). Linn County has a funding commitment of \$200,552.

This 28E agreement is for the ongoing implementation of the Linn County air quality construction permit, Title V operating permit, and ambient air monitoring programs mandated by the Clean Air Act Amendments of 1990. The Linn County Air Quality Division has a certificate of acceptance pursuant to Iowa Code Section 455B.145, as implemented in 567 IAC Chapter 27.

The duties of the Linn County Air Quality Division staff include reviewing applications and issuing permits for the construction of new air pollution sources, monitoring ambient air quality, performing inspections, and reviewing and drafting Title V operating permits.

The 28E agreement with the Linn County Board of Health is entered into each year. By entering into this 28E agreement each year the Department has been able to achieve successful implementation of an

air program within Linn County, as evidenced by the continued attainment of air quality standards in Linn County, the DNR's 2005 audit of the Linn County program, and quarterly reports submitted by Linn County Air Quality Division under the current agreement.

Motion was made by Charlotte Hubbell to approve the Contract with the Linn County Board of Health for the Air Quality Program as presented. Seconded by Henry Marquard.

Dave Petty: One question. Is there something, we do this each year, is there something we are going to be able to learn specifically that we will be able to find in other counties five years from now? Or utilize, not only are we doing a service here, but is there an educational something being put together that we could expand clear across.

Wayne: They run that program just like we run our permitting program.

Dave Petty: So we're not trying to determine anything out of here that we could best utilize somewhere else.

Rich Leopold: It's more compliance monitoring. Making sure that the identified priority pollutants are within compliance limits according to federal standards.

Dave Petty: And this, of course, is where we have a lot of air quality problems. Okay. Thank you.

Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT - IOWA DEPARTMENT OF ECONOMIC DEVELOPMENT – SMALL BUSINESS ENVIRONMENTAL ASSISTANCE LIAISON

Christina Iiams presented the following: The Department requests Commission approval of a 28E agreement in the amount of \$122,100 with the Iowa Department of Economic Development (DED) for the period of July 1, 2007 through June 30, 2009. This is a total decrease of \$17,900 from the prior 2 years due to DED's commitment of funds. The agreement establishes cost reimbursable payments, totaling \$122,100; \$60,000 for SFY 2008 and \$62,100 for SFY 2009. This 28E agreement is funded through Title V program fees (\$100,700), Pollution Prevention funds (\$10,700), and Brownfield's funds (\$10,700). DED has a funding commitment of \$20,700.

The Small Business Assistance Program, which is mandated by Section 507 of the Clean Air Act, provides technical and non-technical assistance to small businesses. The State of Iowa has established that DED will fulfill the non-technical assistance component. The purpose of this 28E agreement is to allow the Small Business Environmental Assistance Liaison at DED to administer a small business environmental assistance program.

The Small Business Environmental Assistance Liaison's duties include serving as a non-technical contact for small businesses seeking information and assistance related to fulfilling their environmental permitting responsibilities, assisting with concerns between Iowa's small businesses and the Department,

and ensuring that Department regulations are understandable. The Liaison also works closely with the Department to address evolving issues and to provide additional assistance as needed.

The 28E agreement with DED in the past has been entered into each state fiscal year. Due to the overall collaboration between DED and the Department on many projects and the scope of the 28E agreement, this agreement was given a two year timeframe. The two year period will assist in allowing projects to continue without being interrupted by the contract negotiation process each year. By entering into this 28E agreement in previous years the Department has been able to provide Iowa's small businesses with assistance and information that helps to ensure the Department's regulations are being followed.

Henry Marquard: What services would fall into the area of non technical? If you are trying to meet the clean, help businesses meet the air standards, what is non technical?

Christina Iams: Non technical outreach services to small businesses such as publishing fact sheets on updated rules, helping put together workshops to provide services.

Charlotte Hubbell: Typically what kind of businesses are funded under this program? You say small business assistance. Does that include only non agricultural businesses? Does it include farms?

Christina Iams: No. At this time I will introduce Dan Nickey who is the manager of the Iowa Air Assistance Program, which is the technical side of the program, and Jan Loyson, the small business liaison which is the non-technical side. Dan would you like to take that question?

Dan Nickey: To answer your question on the agriculture basis: No, generally we do not work with agriculture based businesses; mainly manufacturing and retail.

Charlotte Hubbell: Is there another program where you do work with agricultural entities?

Dan Nickey: We have worked with agriculture based for like incinerators, but mainly for the key program but not for really any air quality. We don't work with waste water or anything like that, we're just doing air quality programs. Not saying we won't in the future. And, also the Clean Air Act of 1990 does not regulate air emissions from agricultural and that's what we're helping with.

Mary Gail Scott: Okay. This contract is dealing strictly with the air?

Wayne Gieselman: It's a majority air. Jan, for example, last spring put on a series of workshops across the state dealing with open burning, open dumping, not a glamorous project but probably the most complained-about things we get in the department. She worked with counties and local governments to try to explain what the regulations are, what the requirements are, and what they can do to the programs that might make that emission maybe not go away, but improve that emission. Those are the kinds of things Jan does. We can expand this program to purely air. We started trying to get into the pollution prevention due to a little bit of water issues rather than just air only. I just talked to Jan and Jessica Montana, water advocate at DED, yesterday about our performance track program. We are actually trying to get all those programs to work together because they are all basically in the business of providing compliance assistance: How do I stay in compliance with the regs? What new is coming down the pike? And, how do we get the word out to particularly small business, because it's hard for them to keep up with all of our variety of things we do. It's one of those programs we're working pretty hard at trying to make better, trying to improve that outreach.

Motion was made by Charlotte Hubbell to approve the Contract with the Iowa Department of Economic Development for Small Business Environmental Assistance Liaison as presented. Seconded by Mary Gail Scott. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT - UNIVERSITY OF NORTHERN IOWA'S (UNI) IOWA WASTE REDUCTION CENTER – SMALL BUSINESS ASSISTANCE PROGRAM

Christina Iiams presented the following: the Department requests Commission approval of a 28E agreement in the amount of \$461,580.00 with the University of Northern Iowa, for the period of July 1, 2007 through June 30, 2008. This is an increase of \$21,980 from the prior year due to a change in personnel salary and benefits. This 28E agreement establishes cost reimbursable payments solely funded through the Title V program fees.

The Small Business Assistance Program, which is mandated by Section 507 of the Clean Air Act, provides technical and non-technical assistance to small businesses. The State of Iowa has established that the University of Northern Iowa will fulfill the technical assistance component. Through this 28E agreement, the University of Northern Iowa's Iowa Waste Reduction Center (IWRC) will continue to allow the Iowa Air Emission Assistance Program (IAEAP) to provide technical assistance to small businesses.

The IAEAP assists small businesses with air permitting requirements, emission estimations, and determination of regulatory status and compliance requirements. They also provide small businesses with on-site visits for compliance and pollution prevention assistance, and information concerning alternative technologies, process changes, procedures and methods of operation that help reduce air pollution.

The 28E agreement with the University of Northern Iowa is entered into each year. By entering into this 28E agreement on a yearly basis, the Department has been able to provide various aspects of technical assistance to Iowa's small businesses. The assistance provided by IAEAP under the current agreement includes 178 construction permit applications, 128 emission inventories, 59 facility site visits, and 35 other various types of assistance (exemption applications, outreach presentations, etc).

Mary Gail Scott: Small business again, is that defined the same as the other contract we just approved. It's those that provide air permitting assistance that are not Title V.

Christina Iiams: Right.

Mary Gail Scott: Title V fees pay for this?

Christina Iiams: Correct.

Mary Gail Scott: What's the staffing level for this?

Christina Iiams: For the IAEAP is five staff members, part of this being support staff.

Mary Gail Scott: So for five staff paying \$366 thousand in personnel and benefits or about \$70,000 per person. It seems high.

Darrell Hanson: About \$50,000 a year, \$45,000, a year then I would guess.

Mary Gail Scott: Seems higher than we use for other contracts which is closer to \$60,000. Is that with benefits?

Darrell Hanson: One difference is, this is with the University. The medical cost tends to be higher and their pay scale will tend to be higher I think. They may have a difference between professional and scientific vs. administrative staff. Does UHL use quite a few professional scientific folks as opposed to faculty folks? I would guess even UNI uses a lot of professional and scientific also but speaking as professional and scientific staff they are paid less than faculty.

Mary Gail Scott: What's indirect cost?

Christina Iiams: Indirect cost covers administrative items, and further details I need to reference back to Dan.

Dan Nickey: I believe indirect cost would cover stuff like what the university charges for facilities, payroll, basically all those reports we get from the university.

Darrell Hanson: It's all the costs not directly due to program or service delivery but they are costs that are theoretically essential in order for program and service delivery to occur. The assumption is that if this program is 3% of the entities total programs and services, then it should pay for 3% of the programs costs of opening up the door, turning on the lights, hiring the staff.

Mary Gail Scott: Does this program have an outreach element to it to try to bring people in or do you dependent on people coming to you for assistance?

Dan Nickey: No, no. We have an extensive public relations where we go through our newsletter, through our trade associations, DED, to get the word out. One thing we don't do is cold call. We do have an extensive promotional campaign with other agencies as we talked about during the DED contract. In the Liaison's outreach a comprehensive package of all that IAEAP has to offer gets out to all the organizations throughout the state.

Mary Gail Scott: So this has no element of trying to find new places that needs to have permits that don't know about it?

Dan Nickey: Companies out of compliance?

Mary Gail Scott: No, companies that don't know they need a permit.

Dan Nickey: Oh, yes. That's what I'm saying. We try to let companies know that we're here and also when they need a permit like the workshops we did with Jan on the C&D. We will be doing grain workshops with the DNR; these workshops will entail quite a bit about what permit(s) they may need.

Mary Gail Scott: Okay. Thank you.

Christina Iiams: DNR staff involved through the Air Quality Bureau and field offices also let business know that the IAEAP is available for assistance.

Motion was made by Charlotte Hubbell to approve the Contract with University of Northern Iowa's (UNI) Iowa Waste Reduction Center for Small Business Assistance Program as presented. Seconded by Suzanne Morrow. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACTS - EASTERN IOWA REGIONAL UTILITY SERVICE SYSTEMS, REGIONAL UTILITY SERVICE SYSTEMS, ADLM FACILITIES MANAGEMENT SYSTEMS, WASTEWATER MANAGEMENT SERVICES OF CENTRAL IOWA, RURAL UTILITY SOLUTIONS

Patti Cale-Finnegan presented the following item: The Environmental Protection Commission is requested to approve the agreements between the Department and Eastern Iowa Regional Utility Service Systems, Regional Utility Service Systems, ADLM Facilities Management Systems, Wastewater Management Services of Central Iowa (Central Iowa Rural Water), and Rural Utility Solutions (Iowa Lakes Regional Water). These contracts are for a one year duration.

The funding for these contracts comes from \$250,000 proposed in the Clean Water State Revolving Fund (CWSRF) Intended Use Plan. A portion of the loan fees paid by CWSRF borrowers (non-program income) can be used for general water quality efforts, and the DNR has proposed using it to support regional efforts to address wastewater needs for small communities.

The specific contract amounts are EIRUSS - \$50,000, RUSS - \$50,000, ADLM - \$50,000, Central Iowa - \$50,000, RUS (Iowa Lakes) - \$50,000. These contracts have been created to help build sustainable utility management organizations (UMO). These groups are to manage the wastewater infrastructure in small communities that are unincorporated and/or too small to effectively manage this infrastructure. These management entities will help establish wastewater infrastructure in unsewered communities and offer to manage the infrastructure in somewhat larger communities that could benefit from this service.

We have been successful in working with three types of management organizations: rural water associations such as Iowa Lakes and Central Iowa, multi-county 28E cooperative management programs such as EIRUSS and RUSS, and a multi-county environmental health group, ADLM. These grantees will cover most of the state. One of the goals of the grants is to assist these organizations to become self-sustaining service providers. The contracts require the organizations to develop and implement business plans for reaching self-sufficiency.

Depending upon the success with these grants and the development of the organizations, we may propose using CWSRF non-program income for similar grants in future years.

Charlotte Hubbell: This might be the wrong time to bring this up but, because this may be a little off track so if you want to shut me off Mr. Chairman please do so, but in terms of standards and wastewater treatment, we are currently operating under some standards that were created do you know when in the 1980s.

Chuck: What kind of standards are you

Charlotte Hubbell: Oh, standards like what a system can handle in terms of a 2" rainfall over a certain period of time. Isn't one of those the current standards for design standards?

Chuck: Yes.

Charlotte Hubbell: Do we need to be talking about how improve those so we don't have so many bypass situations and to the extent we are going to bring these unsewered communities up to speed. Do we need to improve the standards? Do we need to improve the design capability? Is this the right place to talk about this? I don't know.

Chuck: We just started the process of revising and updating our design standards. We are going to be presenting rough drafts of five of the more than 15 chapters, but we have five of the chapters drafted where we're going to the Water Pollution Control Association meeting Thursday. We'll be going to that annual meeting to get some input on those five chapters. We are going to continue with the other nine chapters, all chapters. We are thinking it will be two or three time periods to get all the way through to update and revise those including adding technologies where we don't have design standards. We've got a contract with a company, NSA, that is out doing research and gathering information and data so that we can have, if it's not a total design standard, at least some design guidance for some of these systems or technologies that we don't have a lot of information on. We're in that process right now. It's aimed at in general bringing them up to date and adding technologies that aren't in there today.

Charlotte Hubbell: We are thinking ahead, we're thinking of bringing these new communities online so to speak for future needs, not just current needs, but future needs where possible?

Patti Cale Finnegan: I think that's where the term mission goes, incorporate some of what has been considered alternative technologies into the engineering communities so that those projects can be more acceptable to DNR construction engineer staff.

Motion was made by David Petty to approve the Contracts - Eastern Iowa Regional Utility Service Systems, Regional Utility Service Systems, ADLM Facilities Management Systems, Wastewater Management Services of Central Iowa, Rural Utility Solutions as presented. Seconded by Charlotte Hubbell. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT - IOWA STATE UNIVERSITY EXTENSION SERVICE – MANURE APPLICATOR CERTIFICATION TRAINING

Wayne Gieselman presented the following: The Department requests Commission approval of a contract in the amount of \$164,132 with Iowa State University Extension Service to provide manure applicator certification training and testing for the time period of July 1, 2007 through June 30, 2008. The training and testing are pursuant to HF 644 and HF 2494.

The purpose of this contract is to support activities to develop manure certification training and testing materials for commercial manure applicators and confinement site manure applicators. Topics covered in the training materials will include: certification and manure management requirements of Iowa law and DNR rules; proper procedures for the storage, handling and land application of manure; the potential impacts of manure on surface and groundwater; the development of safety and emergency action plans; and sources of additional technical and educational assistance.

Funding for this contract is provided by fees collected from the Manure Applicator Certification Program.

Mary Gail Scott: Don't they already have the courses developed and the exams developed and the web page developed?

Wayne Gieselman: The web page is developed, the exam we try to change every year, the course we have to try to change every year as well. They are required by law to get trained every year. We try to vary that a little bit so they don't come back year after year and hear the same thing. Darrell, in his shop, does a lot of these trainings. They have somewhere around 60 different onsite and counties and we do one major satellite development. We are actually working with a commercial nutrient applicators to try to introduce some new language to this law to make it a little more flexible and right now the law tells us exactly what we have to train them on.

Motion was made by Mary Gail Scott to approve the Contract with Iowa State University Extension Service for Manure Applicator Certification Training as presented. Seconded by David Petty. Darrell Hanson abstains. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT - IOWA STATE UNIVERSITY FOR NONWADEABLE STREAM ASSESSMENT DEVELOPMENT

Mary Skopec presented the following: The Department requests Commission approval of a contract for the amount of \$88,887 with Dr. Michael Quist and Iowa State University for development of a nonwadeable stream assessment program.

The Clean Water Act requires comprehensive monitoring and assessment of all waters of the state. However, the state lacks monitoring and assessment methodologies on some water body types, such as

nonwadeable streams, which prevents meeting this Clean Water Act goal. The purpose of this contract is to begin a multi-year collaborative project with ISU, DNR, and the University of Iowa Hygienic Laboratory to develop monitoring and assessment methods designed for and calibrated to nonwadeable streams.

The contract period is from June 5, 2007 – June 30, 2008.

Specifically for this contract, ISU will:

- 5.1 Characterize nonwadeable streams using a variety of GIS techniques.
- 5.2 Identify candidate least- and highly-disturbed reference sites
- 5.3 Evaluate sampling designs and protocols
- 5.4 Identify assessment sampling sites
 - (a) Probabilistic sites
 - (b) Targeted sites (i.e., least- and highly-disturbed references sites)
- 5.5 Execute the sampling design
- 5.6 Assemble and calibrate biological condition metrics and develop indices
- 5.7 Implement assessment and monitoring program
- 5.8 Prepare a Quality Assurance Program Plan in conjunction with DNR staff.

Funding for this contract comes from state water monitoring funds appropriated under the Environment First Infrastructure Fund and from the Department of Natural Resources Fisheries Program.

Mary Gail Scott: For the 24 days from June 6 through June 30, 2007 the cost is \$25,500. For the following fiscal year, it's \$63,003. We have graduate student costs of \$5,000 and field techs for \$6,000 for those 24 days. How does that, comparatively it's much less during the following fiscal year.

Mary Skopec: That's because if they can get out in June, they will work more in June. So if conditions hold they will really do a lot more monitoring in June. They will be ahead with more graduate students, as a start up cost, trying to be out in the field early so the work really does happen for the most part most of it happens in the summer. If you can frontload that you could start to get some of that work done, that would be ideal. If weather conditions don't hold, and this year is looking a little bit iffy, that money will carry over to the next fiscal year and we'll do that work in July and August if the rain continues and the streams are high.

Mary Gail Scott: So for the entire fiscal year of July 1, 2007 through June 30, 2008 graduate students are \$20,000.

Mary Skopec: Yes.

Mary Gail Scott: So only four times what 24 days in June of this year is going to be I am having trouble understanding the level of effort.

Mary Skopec: Sure. What would happen we can do all the monitoring in June. That's not likely to happen. They are going out in June, but essentially if they can do that work in June, they do as much as possible - whatever sampling they can do in June as well as start working to pull together that data, because part of this trying to figure out what's out there. The June work is developing this protocol starting to get out to the field a lot so the work is front loaded and then the next year, June 2008, starting to work up that data and look at it so that the next season contract, fiscal 09, we can refine those

methods and go back and do samplings with the new protocol. So essentially that may not all fall out in June, but you have to put it up there in case they can go out and do all that work because the water conditions are favorable and they are hoping, in a sense to go out and do as much as possible in June before they have field problems. So essentially try to front load and do as much work as possible early, but as they get the samplings in, then the efforts really starting working to pull that data together.

Charlotte Hubbell: We're almost finished with fiscal year 2007. Right? So are you just talking about this month? I mean have you already started the program?

Mary Skopec: No, they would start tomorrow. Very likely they won't get all this work done in June so it will carry over, but the peril of not front-loading in could leave us short in the current fiscal year and sometimes we've done that, but by not allowing them to get out as soon as possible in June, we risk heavy rains later in the season and can't get out and sample. We have to be optimistic about the weather allowing them to be out there. What they don't spend in June can be carried over into fiscal 08 and again the cost will cover both contracts so they're not allowed to spend it however they feel, they have to meet the terms of the contract. Billing in June allows them to get out and do as much work as possible and allows them to work in 08 if they need to.

Mary Gail Scott: So in the end what will you design, what will be ended up with, what will be deliverable is defined representative disturbed sites and records sites.

Mary Skopec: As well as reference because what we don't know is what the final methodology is. We cross the stream, you do fish stocking, the question is: "is that same methodology appropriate for non-wadeable streams and a lot of work can always adjust that. Further your efforts have to be a lot more standard to capture the fish, capture the benthics to figure out the habitat, to look at how the stream changes much greater control on that factor. Move up to nonwadeable streams 50s you are looking at a much greater land area. You have to understand what reference you are talking the upper 50 or the lower most quartile. So look at and what is recommended and what does a non wadeable stream look like; what does that land and characteristic look like. How do you figure what is appropriate so there is a lot of work involved

Mary Gail Scott: So do we have a sampling methodology from another state to which they have adopted that we're testing? Is that what we're doing?

Mary Skopec: Yes, we have about four or five different methods that we are going to try. For example some states are using two teams to move up the stream and sample together. The challenge is if you have three or four the equipment costs are more. If you zigzag back and forth with one unit the fish may get around so we wanted to be able to test both of those and say in our opinion it's worth the cost to have flotillas up the stream than to have one unit up there. So there are about four or five methods that we planned, especially the contract with Iowa State to do since others will be involved including UHL fishery bureau DNR. Our staff will also be involved in testing those methods and looking at those methods.

Mary Gail Scott: You say 07 monies can carry over to 08? But aren't graduate students salaries set?

Mary Skopec: Not necessarily and in this case Mike Quist has offered to hire someone to get the work started from his pot of money starting with literature reviews so he hasn't started sampling. He's a new professor at Iowa State, he's using some of his start-up money to get some of those graduate students in the door so he's trying to get some of his resources to bare on this as well.

Mary Gail Scott: What's the difference between a graduate student and a field tech?

Mary Skopec: Graduate student gets an RA salary, their essentially on salary; the field techs would be an hourly position. Usually a field tech is an under graduate. Tech pay around \$8.00 or \$9.00 is pretty typical.

Suzanne Morrow: Mary, maybe I missed this, but how many years? It says a multi year cooperative project?

Mary Skopec: Right now looking at taking us through fiscal 09.

Suzanne Morrow: and that's \$88,000 that you're talking about for the end of this fiscal year and next fiscal year? That's really a one year amount. Is that right?

Mary Skopec: 13 months.

Suzanne Morrow: So we should be looking at approximately another \$89,000 next year.

Mary Skopec: Actually it's going to be more in the ball park of \$60,000 because once it goes, the contract is front loaded. Doing that method gets people going. The contract for next year will in that \$60,000 range.

Mary Gail Scott: Don't we have a lot of data on streams?

Mary Skopec: We have an awfully lot on small streams. Traditionally the focus is primarily on smaller perennial streams. We do contract with both UHL and USGS to do chemical monitoring on bigger streams. This is really focused on the fish, the habitat, trying to bring that all together in a biological assessment protocol. I think where we fall down on the job is trying to handle a 12 nitrate reading. Trying to say something about the overall integrity of the stream and by incorporating some of these biological parameters give a better read, I think, on how well that stream is doing; so the goal that this all comes together so Quist and company will take the data that's being collected or has been collected on the stream and try and incorporate it.

Chuck Corell: We are hoping some day to take what we do on a small stream and do it on a larger stream and actually have a water quality standard that says we have a score of this; otherwise we're going to consider the river impaired. It can get to that level of sophistication. And of course, it takes a lot of paper to get there.

Mary Skopec: In our wadable protocol it really took about 10 years to get to that point. We are hoping to do this in about three or four years so we are taking the jump start that we have that data and applying it here.

Charlotte Hubbell: Will you be doing tissue samples of fish?

Mary Skopec: We haven't included tissue samples because in general the tissue has been used in a different assessment format. A different type of ecological help. That's not to say that we couldn't do that. In fact we do have an awful lot of tissue samples collected from previous years that we could examine.

Charlotte Hubbell: I mean to the extent that people eat the fish that they catch might not be a bad idea.

Mary Skopec: It has to be a slightly different question because then it is a human health question, not ecological.

Charlotte Hubbell: What about birds? Birds eat the fish.

Rich Leopold: We do have a fish tissue sampling already. I can't remember the extent of it.

Wayne Gieselman: It's not very extensive.

Chuck Corell: Separate criteria for human health which is what's the concentration of pollution in the stream that is protective of people eating the fish.

Charlotte Hubbell: Right, yeah. That's the A classification vs. the B classification.

Mary Skopec: And what I would say too is that what we are doing with this project is starting to figure out is what is the biological data saying about quality of the stream? I don't think that we are ever so confident that we know exactly what is going to be best so that we may have to come back and say this issue would be an important thing to include. At this point I don't know that that a state included this in their biological framework but it does include biology.

Charlotte Hubbell: Well if you are already doing it, maybe you can just get the data from whoever it is that's doing it.

Mary Gail Scott: You know a frustration is that we seem to treat Iowa as a totally separate eco system far too often, that we seem to assume that what happens in Iowa is different than what happens in other states. That frustrates me because I don't feel like we are taking advantage. In this case you definitely indicated that you've looked at what other states are doing and if I am hearing you correctly we're trying to verify which one of those is closest to ours, but my question is those other sampling methodologies, do they then all have a correlation between their biological health of the stream and their chemical impact on the stream and are they similar.

Mary Skopec: In general they do. Similar; not necessarily. Other states have a lot of other contaminants we don't really run into. I was talking at lunch to Shawn about mercury contamination which we haven't run into a lot of right now. Our biggest issue in general with our streams has been habitat alteration. The question is can we really contract habitat? Across the board most states have fairly poor habitat assessments that they do. This measurement is extremely time consuming. Again the challenge of non wadeable streams is how much of the habitat do you need to qualify. Do you need to go 100 years, 200 years, 300 years. The other nice thing about starting this project this year is EPA will be launching a two-year project to a national wadeable/nonwadeable streams. They are expected to be out in the field next year. So by getting the jump on that our methods that we're developing using other states methods and the national method which says on year three you have a pretty good look at how nationally this is working, how locally it is working, how other individual states have survived this. It's a challenge partly because of again that needs data that are available to calibrate a model.

Motion was made by Dave Petty to approve the Contract with Iowa State University for Nonwadeable Stream Assessment Development as presented. Seconded by Charlotte Hubbell. Darrell Hanson abstains. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – IOWA STATE UNIVERSITY – INTENSIVE LAKE MONITORING

Mary Skopec presented the following: The Department requests Commission approval of a \$167,005 contract with Dr. John Downing to conduct biological lake monitoring during the summer of 2007.

The purpose of this contract is to examine the biological quality of Iowa's lakes through the correlation of the lake biological data with significant breakpoints in water quality. Further, the contract will provide analyses discriminating lakes with water quality leading to good biotic ecosystem health from those with poorer ecological integrity. This will allow determination of reference conditions, or "least disturbed condition" in Iowa's natural vs. constructed lakes, shallow vs. deep lakes, and across lakes in the diverse geographical regions of the state (e.g., ecoregion or HUC6 watersheds). These data can then be used to evaluate the status and condition of Iowa lakes (Clean Water Act 305b/303d assessment) and can also be used to determine restoration goals and achievements for state priorities. This contract provides monitoring on 104 of Iowa's high quality, low quality and intermediate quality lakes for a variety of parameters including water chemistry, biological and limnological analyses.

Work Products include

- Full lake survey with all lakes comparable including 35 new lakes from the "B" list.
- Full profiles of several important chemical and physical parameters.
- Electronic data products linking physical, chemical and biological data.
- Formatting of data for STORET input or other database format.
- Analyses of comparative ecological integrity across the range of Iowa's lake ecosystems including biotic characteristics of the "least disturbed condition" often referred to as "reference condition" for natural and constructed lakes, shallow and deep lakes, and lakes across the geographic regions of Iowa.
- Discriminant analysis showing water quality variables impacting biotic water quality.
- Breakpoint analysis to determine criterion levels of water quality measures.
- ISU will provide reports in a web-based format.
- ISU will provide IDNR with 3 copies of the report in paper format each year, if desired.
- Reports will be made available in pdf format on the web.
- ISU will distribute paper copies of the reports to the community at a moderate cost.
- Data and information will be posted on the Iowa Lakes Information System in as near real-time as is practically possible.

Funding for this contract comes from the Environment First Infrastructure Funds – Water Quality Monitoring Funds.

Mary Gail Scott: And this is the last year for this contract?

Mary Skopec: We're thinking this will be the last year for the family and next year we'll come together with a final massive report that really goes into all that great analyses. We haven't defined at this point what the cost will be for that final overall report. There are deliverables in this contract that request steps to that end goal but until we look at all that data and look at all those possible breakpoints and that will be next year.

Suzanne Morrow: So for seven years, this must be the 8th year, we have been collecting data but nobody has been compiling it into a report?

Mary Skopec: It's been going into a report. For example, the neatest example I can use is it was used to look at lake restoration potential to come up with our 35 most promising lakes for restoration. Without that we didn't really have a good sense of what our high priority lakes were for restoration. What it would cost for restoring the lake to a better, more quality condition, so that was crucial information. It's a little bit different than trying to look at most quality standards. Some of that work has been done. I don't think it's gone quite far enough. Jack Riessen, my colleague in the department, had been looking at the information gathered to date. So it's not that we haven't but just sort of the final report, bringing it all together, looking at all that we have been collecting.

Dave Petty: You may have mentioned this; there is 270 out there, how many total lakes do we have in Iowa?

Mary Skopec/Adam Schnieders: That is a good question. The standard is about 800. Some that are classified as lakes are really wetlands. There is other things that maybe aren't standard that might be considered lakes.

Dave Petty: Anything over five acres is a lake. Right? Officially? That's the true definition?

Mary Skopec: I'd have to go back and look at the revision to our new state standards. The 800 came out.

Adam Schnieders: 660.

Mary Gail Scott: What's the need for the plane?

Mary Skopec: The plane is used get back within a holding time.

Mary Gail Scott: What's your lowest holding time?

Mary Skopec: We have 24-hour holding time on bacteria. Nutrients should be back within about 24 hours. So that's part of it. We've been trying not to spend a lot of money on transporting back and forth but with shipping it is extremely expensive with gas prices right now; a plane is actually a more economical way; they can pop around and get some samples, come back.

Rich Leopold: I asked Dr. Downing and he was telling me it is more cost effective because of the price of fuel, staff time, and everything else and I think it's a plane that has normal downtime that we get a deal on or something like so hoppin' from these different pick up points is actually saving them money.

Mary Gail Scott: Wouldn't it be even cheaper to just find labs in the areas where we're working that we could use?

Mary Skopec: Yes, we're working on that. Actually I hope to have a conversation with Lakeside Labs, University of Iowa, and other partners in the lakes to talk about getting lakeside labs actually back up and running. They have a facility up there in Dickinson County but they haven't really manned it for a long time so part of the challenge is where we have water naturally is; we don't necessarily have facility to do monitoring here to do testing. If Lakeside gets somebody up there fulltime and certified, then we have a much more timely, much more cost effective way of monitoring.

Charlotte Hubbell: What good does it do to have all this information if you can't pinpoint the source of the problem. We have repeated E-coli problems in Clear Lake on the beaches there; we don't know where it comes from.

Mary Skopec: The problem is it usually is not just a single source. We have a thriving program including a seven state consortium including the states of Minnesota, Michigan, Ohio, Indiana, Wisconsin, Illinois to look at monitoring bacteria, source tracking, fluorometry and other methods. Those programs are ongoing and they're excellent. So we are starting to be able to come up with general areas where we're finding problems with bacteria. The one thing we haven't been able to determine in the lake monitoring is that with higher nutrients comes more cloudy waters and more ongoing bacteria problems. I would say we've come a long way in understanding how you really protect lakes. We're not 100% there but we have a lot of information.

Motion was made by Henry Marquard to approve the Contract with Iowa State University for Intensive Lake Monitoring as presented. Seconded by Charlotte Hubbell. Darrell Hanson abstains. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT – UHL - SFY 2008 AIR QUALITY BUREAU SUPPORT

Sean Fitzsimmons presented the following: The Commission will be asked to approve the attached interagency (28E) agreement between the Department and the University of Iowa Hygienic Lab (UHL). The agreement funds UHL support of Air Quality Bureau ambient air monitoring activities. UHL operates most of the ambient air monitoring sites in the state. It also provides analytical and technical support for ambient air monitoring activities throughout the Iowa. It weighs and determines the ionic composition of particulate samples and performs analysis of air samples for several toxic compounds often found in urban air. UHL also provides analysis of asbestos samples gathered by DNR inspectors. The UHL quality assurance group conducts annual audits of UHL ambient air monitoring activities as well as those of the Local Programs.

The agreement is for the period of July 1, 2007 through June 30, 2008. It establishes variable payments, totaling \$1,899,870. This contract is funded by the air contaminant fund, \$918,056, 105 federal grant, \$557,654, 103 federal grant, \$189,160, and legislative funding for monitoring near animal feeding operations, \$235,000. The agreement amount for last year was \$1,812,910. Increases in line items in this year's contract are associated with increased costs for operation and maintenance and staff.

The air monitoring that will be performed under the provisions of this contract will provide for ongoing air quality surveillance in the State of Iowa and will allow the department to judge the efficacy of its air pollution control efforts. It will continue efforts to characterize areas in eastern Iowa where elevated fine particulate are close to federal health standards.

Mary Gail Scott: I just had some curiosity I guess. We have supplies and equipment broken out in the cost on page 16. Then we also have ion filters and air top analysis and I guess my question is if we're paying for the people, the supplies, and the equipment; what's the extra charge for?

Sean Fitzsimmons: The UHL performance and analytical analysis outside the routine analysis and contract. For example, we estimated Cox's analysis using HPLC; that's sampling equipment that we don't own. It's run by the laboratory as a whole so the item analysis is done by Rick's Water Lab in Des Moines. The APLC is done there at University of Iowa. The routine activities of the Lab and Equipment equally dedicated to Air Quality to additional ones that are broken out and the high end analysis and toxin analysis; those are service type elements for O'Keefe type analysis.

Mary Gail Scott: And then the cargo vans?

Sean Fitzsimmons: The cargo vans these guys on a continuous monitor they go from, they got these still people, a school janitor, a grade school janitor, but we need full-time people to do this thing. If people like school janitors pick up the filters the people running continuous monitors like the O-zone monitors, they come all the way from Iowa City, they're full-time people, they run groups across the state and they rack up miles on these vans. What we do is every year we buy a couple of vans. One of the highest mileage ones in this contract is 100 K, 200 K, miles on the vans and so we pay for those people to get around.

Motion was made by Henry Marquard to approve the Contract with University Hygienic Laboratory for SFY 2008 Air Quality Bureau Support as presented. Seconded by Charlotte Hubbell. Darrell Hanson abstains. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT - ENVIRONMENTAL MONITORING AND LABORATORY SERVICES – UNIVERSITY OF IOWA HYGIENIC LAB

Barb Lynch presented the following: The Department requests Commission approval of a contract in the amount of \$429,872 with the University of Iowa Hygienic Lab with the intent of aiding the Director of the Iowa Department of Natural Resources in determining the quality of the environment of the State of Iowa by providing field and laboratory services in support of environmental control programs and summarizing and reporting environmental quality data.

The contract scope of work includes:

- Water Quality Monitoring: Influent and effluent composite samples; fish kill monitoring; emergency response; fish tissue monitoring, and storm water runoff.
- Water Supply Support: Drinking water and public water supply monitoring.
- Director's Office: One part-time staff position to represent the Department on various boards and committees and coordinating Department activities involving agriculture with commodity organizations, wildlife groups, environmental organizations, federal and state agencies, and other stakeholder groups.
- UST Corrective Action Specialist: One staff position to manage corrective actions at high risk leaking underground storage tank (LUST) sites
- Iowa Great Lakes Watershed Assessment: One full-time staff position for technical assistance in completing a watershed assessment of the Iowa Great Lakes region and comprehensive plan to address water quality
- Dam Safety Inspection: Three part-time staff positions to inspect all dams (nearly 300) in the state that are classified as "major"

The University Hygienic Laboratory (UHL) is the State of Iowa's Environmental and Public Health Laboratory. The Department has several contracts with the laboratory to provide analytical and fields services.

This contract is federally funded through the U.S. EPA Performance Partnership Grant and the EPA Section 319 Nonpoint Source Management Program.

Darrell Hanson: With your fish tissue sampling, the only reference I spotted, and I could have missed it for fish-tissue sampling was in the case of fish kills.

Barb Lynch: Yes, and we work together with fisheries.

Darrell Hanson: This does not involve any fish-tissue sampling for determining advisories on consuming fish? This is just to check to see what happens with fish kills? Is that what I understand?

Barb Lynch: We did last year in Mason City at a pond that was across from an industry and I believe that was only an advisory up there.

Darrell Hanson: So if you are doing sampling of fish tissue to decide whether to issue an advisory, maybe you can't answer this question and I should have asked you ahead of time, do you know if the sampling process samples the entire fish, all fish muscle tissue, or just the part of the fish that people actually normally eat?

Barb Lynch: We have done both. We have done the whole fish and we have done fish fillets and we usually have, and in this case we did both, and we have information for them from both sides and in this case because it involved a federal investigation is why we had to post the advisory.

Darrell Hanson: The only reason I bring that up is because I used to do a lot of fishing in Wisconsin and it was always a little frustrating because their fish advisories, and I didn't know how Iowa did it, would be based on fish tissue samples that included parts of the fish that people did not normally eat and that does not necessarily mean that the advisory is invalid, it just meant you couldn't really tell. Since I don't eat the skin, and I don't eat the belly fat or meat, and I don't eat the organs, I don't know what's going on and it would be helpful to do it by the actual part of the fish that people eat.

Barb Lynch: We do it in both ways depending on the situation. Most of these in this contract will be associated with spills and tracking it to see what impacts it has on the water body.

Henry Marquard: I have a global question. We're having a number of UHL contracts brought here today. I'm a little bit concerned, these are no-good bids, there's no competition for them, there are other labs in the state, there are labs that these oversee resources that are cheaper; I'm a little bit concerned over the fact that we are handing out millions of dollars a year of contracts without any competition.

Ed Tormey: Pursuit to 455B, 103, which is director's duties; it says the director shall contract with the approval of the commission with public agencies of this state to provide all laboratory scientific field measurement, environmental quality evaluation field services necessary to implement the provisions of this chapter, 455B, Chapter 459, and Chapter 459A. It only gives the director of public agencies cannot provide these services can the director then contract with the approval of the commission with any other entity. We're required by law to contract with public agencies which University of Iowa Hygienic Labs certainly is and that's why there is this ability to go forward without bidding.

Darrell Hanson: If we did bidding, however, we'd have to limit the bidding to public agencies within the state?

Ed Tormey: Yes.

Darrell Hanson: So a private would not be eligible?

Ed Tormey: Right.

Darrell Hanson: We could get Iowa State?

Charlotte Hubbell: Do they have a lab?

Barb Lynch: Their laboratory is not certified necessarily in the specific programs that we need.

Rich Leopold: They've sort of carved out their niches. I mean the University Hygienic Lab specializes in certain types of testing and then obviously we do at Iowa State University, a lot of the air goes through UHL, but ISU does most of the water type monitoring.

Barb Lynch: I would add that when we have planned events that are going to happen over the weekend we try to make arrangements with UHL and get our samples there. We have shipping issues sometimes and particularly have bacterial contamination for emergency response, say a tornado or some other or sample drinking water or some other things that need to be done within 24 – 30 hours but we have made arrangement with private labs on weekends and holidays.

Suzanne Morrow: I'd like to know who this three-quarter time person is that fills in for Rich.

Rich Leopold: That's Lyle Asell. He's a special assistant to the director's office. He does a lot of work with especially farm programs, soil conservation, and conservation service.

Mary Gail Scott: So there are quite a few of these boards that he sits in on?

Rich Leopold: Thank goodness.

Mary Gail Scott: But he's paid by UHL?

Rich Leopold: He's paid partially through UHL.

Mary Gail Scott: Some of these I can see that makes sense if you have monitoring and sampling to be done. I can see contacting someone with UHL. The Underground Storage Tank corrective action; does that make sense to have that person employed by UHL?

Tammie Krausman: One of the things we do is if the funding isn't long term, we don't hire a person on as a full-time employee with the state so we use this as a temporary; otherwise, our restrictions can say we use Merit Resources with is an 18-month long contract and termination after 18 months regardless if the work is done. Sometimes the grant is for three years, so we don't want to hire two people so we will use UHL in the interim. But we know it's a three year contract so we don't want to hire them as a full-time employee and have to terminate them in three years or find similar funding. It's a closed project.

Mary Gail Scott: UHL has more flexibility and temporary for contract employees.

Tammy Krausman: Yes.

Motion was made by David Petty to approve the Contract with University Hygienic Laboratory for Environmental Monitoring and Laboratory Services as presented. Seconded by Mary Gail Scott. Motion carried unanimously.

APPROVED AS PRESENTED

CONTRACT - UNIVERSITY HYGIENIC LABORATORY (UHL) FOR IMPAIRED WATERS MONITORING AND ASSESSMENT

Mary Skopec presented the following item: The Department requests Commission approval of a contract for the amount of \$260,115 with the University Hygienic Laboratory. The contract covers a variety of water monitoring and assessment activities related to the development of restoration plans for impaired water bodies. These activities are designed to obtain specific information needed to better define the impairments through the stressor identification process, and for the development of water quality restoration plans or Total Maximum Daily Loads (TMDLs). Site specific data are needed to better define the impairments and identify pollutant loads or other non-pollutant based stressors, such as habitat alteration that contribute to the impairments. The data collected under this contract will help technical staff make these determinations. The contract period is from June 5, 2007 – June 30, 2008.

In this contract, UHL will collect data for 8 lakes and 13 stream segments that have been prioritized for TMDL development. Various types of stream monitoring and assessment activities will be conducted, including: biweekly and storm event sampling for conventional and toxic water quality parameters; continuous monitoring of dissolved oxygen and water temperature; surveys of benthic macroinvertebrates and fish; stream flow measurement; physical habitat assessment; sediment and water contaminant screening. Lake sampling will include the collection of 2 additional samples per lake during the summer period (to be added to the ambient water monitoring schedule). Samples will be analyzed in the laboratory for a suite of water quality parameters and trophic state indicators such as

nitrogen, phosphorus, suspended solids, and turbidity. A vertical depth profile of dissolved oxygen, pH, specific conductance, and water temperature will also be obtained on each sampling occasion. Federal funding for this contract is provided through Section 319 of the Clean Water Act.

Mary Gail Scott: I just have an odd question which really has very little to do with the contract. Given the nitrogen concentrations that we tend to have in our streams, do you ever look NBOD as opposed to CBOD?

Mary Skopec: No, we don't look at BOD. That would be interesting. We've looked at trying to find relationships between nitrate levels and whether or not we see in biology. I almost did a report a few years ago where you do start to see great point early on in terms of nitrogen concentration, especially nitrate concentration, but we've never looked at BOD.

Mary Gail Scott: It's an easy test to run, pretty cheap. Might be interesting. Eats a lot of oxygen. Also, I should make the comment because I'm the cause of us getting all these contracts every month. I really appreciate it but we no longer, I think I no longer want or need to see the boiler plate language. I really want to see the scope of work and the money and the personnel. I want to see the things that are unique to this contract, but when it's just all the EEO stuff, don't hurt us, we won't hurt you, if we want to get rid of you we will type of language; I don't need to see that and I'll save some trees. But I do want to see everything in writing. I don't want to depend on my computer and I want it in time. Those are the two things that I do want. But as far as driving, you guys sending us boiler plate language was really never my intent and I don't think I ever adequately communicated that so I'm clear now, right?

Rich Leopold: Do you want us to summarize the information in the contract or you actually want copies of the contract?

Mary Gail Scott: Anything unique to that contract. All you need to do is copy it from the contract; I don't want you to do a lot of extra work for it, so whatever you've got, the scope of work, you know everybody does things a little differently it appears to me the way the front-end load the contract and end-load the contract so just whatever's unique, but I don't need to see EEO conditions. Darrell, I'm assuming you haven't changed the language in those.

Dave Petty: You mentioned luck of the draw in northeast Iowa; is there a lot of watershed work being done up there or was it truly the luck of the draw?

Mary Skopec: Most of what happens is they take a look at all the waterbodies and things that have been on the list longer you want to get to because of the clock on those so essentially what they've done is sit down with stakeholders and say these are waterbodies that we think we should start working on. Most of the draw is a little bit of who's on the list first? Some of that is determined by monitoring.

Mary Gail Scott: These are all Wadeable streams?

Mary Skopec: yes

Dave Petty: Another, maybe this would be as good a time to bring it up as any. I talked a little bit about it earlier, but everybody knows I'm on the Iowa River and the last time when the new list came out the section of the river that I basically own was put on the list. We had discussion and I am pretty sure that it should not be and as your people looked into it they came up with documentation that the wrong

information was applied to the wrong part of the river. Now in most cases that might just be a simple mistake but I want to make sure that you realize that when I go to DC I'm known as the Iowa River and as I've testified in congress and everything else I've used that perk pretty specifically and as environmental council put it up on all their web pages my part of the river is what was highlighted which I think your letter here says it was a mistake but I want to make sure you realize that it created a long term, long lasting results for me personally. As I continue to get calls from DC and other places the fact that I have been fortunate enough to receive an awful lot of national and state and regional awards and that has specifically been issued is part of reason. So even like EPA is going: "Whoa, what the hell did we do wrong here?" So I just want to make sure that everybody in here realizes that and it created a real problem for me and it is pretty irritating that our environmental council made a real issue and point out of it specifically when there are not even any hog buildings in that part of the country. There are up there but not in mine. So anyway with that being said we need to be a little more careful maybe.

Mary Skopec: Yeah, and that is truly an unfortunate mistake. I know we talked a little on break about how you get draft lists and part of the problem is by having a draft list, you are able to have professionals look through and find these mistakes. We in general are very careful and try not to have mistakes on our list. We are working on making things electronic because right now trying to take these long water body IDs and make sure you are on the right place with the right information is somewhat challenging. _____ integrate the form electronically to not introduce an error that way; but in general I think it is also important to realize that even if you are on the stream that is called an impairment, the source of that impairment may not be local, it may be further upstream and so that is one of the things that is difficult, is that the bullseye does go to that particular location where monitoring occurred. So we know in a lot of cases it's not a local situation. Bacteria for example can travel. A lot of other chemicals can travel as well. So that kind of saying the impairment is there. It may have started way up stream but when we monitored it was there.

Dave Petty: I think most people recognize that but it was plastered on all the web pages that this is the spot.

Mary Skopec: I'll ask that we double, triple, quadruple check that we don't have errors.

Dave Petty: I'd like to think that it was just an accident but also for several days thought it was probably intentional, because I've spent a lot of time to really, really trying to work and bring agriculture to the table to help solve a lot of issues that we all deal with. It's like cutting one leg out from under you; you know it's pretty hard to an ass-kicking contest with one leg and that's kind of the way it was left. So anyway enough said.

Mary Skopec: I'll go back and make sure we double, triple check. I don't think we've seen errors like that very often. It's unfortunate in your situation but we're trying to make it more electronic. We don't want anyone to be unfairly identified.

Darrell Hanson: On this particular situation, this is not an indelible mark; I mean some of the PR has already been done but that will be corrected.

Mary Skopec: Yes. And that is part of the purpose of having a draft list because there may be things that we missed.

Darrell Hanson: At what point is the correction made public or announced or

Mary Skopec: When the final list comes out. After the draft list is done, the public comment we have another couple of weeks, then John puts together response of his summary on a different and in this case he'll say, yes, this needs to come off the list and all the information goes to EPA to review and the final list comes out.

Darrell Hanson: What length of time are we talking about?

Mary Skopec: Some of it depends on EPA. For responses, a month, two months.

Darrell Hanson: So you think within about a month or so there will be an announcement of the mistake.

Mary Skopec: The problem is it has to go to EPA before it can come off the list. EPA has taken upwards from six to nine months to approve our list in the past so we could say that these made it but

Darrell Hanson: Under the circumstances of this particular situation is it possible to make some public statement prior to that?

Mary Skopec: I would think so.

Darrell Hanson: It might be a good idea.

Rich Leopold: I think that the department has to acknowledge this unfortunate error and take steps to rectify. I know that the council immediately pulled it off their website too as I understand it so. I is especially ironic and unfortunate.

Wayne Gieselman: We had another stream where there was a cattle run a year and one-half ago.

Suzanne Morrow: I know we have no control over what the Iowa Environmental Council does, but they made a pretty big splash about it. I would think that since we made the error on this side that maybe that maybe we need to direct a letter to the council point out that there was an error made and you know asking them if there was something they could do to rectify it in the same manner they splashed it all over the pages to begin with. I mean it's actually a person's reputation that we're talking about here and it seems to me that that's not right. Just because David's sitting here, it wouldn't be right no matter who it was. And if we make the mistake, and it sounds like we have, you're taking it off and doing what you can.

Darrell Hanson: That is sort of the point I was trying to make. There's a difference in correcting the record and letting the public know that the record is being corrected.

Suzanne Morrow: Right. Especially when it's going to be taken off a list and quietly going to EPA and then it will just filter back and okay this is what the new list is. They don't talk about there was a mistake made.

Darrell Hanson: I'll guarantee that the draft list got more publicity than the final

Suzanne Morrow: Absolutely.

Mary Skopec: Again this is unfortunate but the draft list got a lot of publicity because it's a draft. It isn't really a final list that we can act on.

Darrell Hanson: I don't know what the public statement ought to be but I think there ought to be some sort of, rather than wait for the list to be corrected I think we ought to figure out some way to

Mary Skopec: We can put together something that talks about, there may be some things that are going on that we didn't see as well so there

Darrell Hanson: That will be made public at that time or not until after EPA has gone through it?

Mary Skopec: It will be public at that time because that will be part of the draft as it goes to EPA for approval.

Henry Marquard: Let's go back to the contract. How in general is the determination of where they are going to put the resources, what streams etc.? Does the DNR make that decision? Does the lab make that decision? How do they

Mary Skopec: You mean on the streams?

Henry Marquard: I mean which streams? What part of the state?

Mary Skopec: The which streams question, the department is definitely making that determination; so we've got a natural list and all the impaired waters to go back to from '98 for example. Water bodies that need TMDL, we take a look at those and decide is it better to go to the old river or is it better to go to the Raccoon River or here or there? From that the staff makes a recommendation, then that goes to the stakeholder groups and say which of these water bodies? Do you agree with this assessment? Do you think we should do different water bodies. In some cases some groups come back and say: "We're doing an awful lot of work on Dry Run Creek; do you think the TMDL is the jumping off point for us to do some water quality improvement? So then they've gotten to the list because of the stakeholder input. Once those streams are determined by sampling the department is going in saying here is where we think we need to sample in order to determine what is happening in that stream. So it's really the department's vision in talking to UHL with their input but the decision making is all happening in the department.

The one thing I can provide an example on is Yellow River which is a little big, but I feel pretty strongly that there is a big coalition of really interested citizens, counties are interested, so because of that interest maybe Yellow River isn't appropriate. It's really based on that interest.

Henry Marquard: Is there a an ability at making differential between like rural streams and urban ones and then like for example Mad stream here at Muscatine or Devils Creek in Davenport and most of what we hear I think are kind of like out in the rural areas and things like that. Are we doing stream/river assessments in the urban to the same level?

Mary Skopec: I wouldn't say it's to the same level but I are doing urban stream assessments. One little stream that's identified in the contract is Dry Run Creek. Dry Run runs through Cedar Falls/Waterloo and is impacted by the University of Northern Iowa at Cedar Falls. Again there is an active work in progress to do some implementation on best management practices. We had a handful, but considering the proportion of urban streams to rural, I think we're getting there.

Henry Marquard: What came to mind and I was very happy to see earlier was the contract for non-wadable streams because those of us who live on the Mississippi or the Cedar, really rivers and I think there has been some feelings over the years that those haven't gotten the attention from the DNR that they deserve. I know that there has been some criticism as to what we're looking at.

Motion was made by Charlotte Hubbell to approve the contract with UHL as presented. Seconded by Henry Marquard. Motion carried unanimously.

APPROVED

CONTRACT - UNIVERSITY OF IOWA HYGIENIC LABORATORY FOR STAFF SUPPORT

Mary Skopec presented the following information.

The Department requests Commission approval of a contract for the amount of \$293,706 with the University of Iowa Hygienic Laboratory for staff support.

The purpose of this contract is to provide professional staff support to three programs within the Department of Natural Resources. One staff position will assist the Watershed Monitoring and Assessment Section in the volunteer water quality monitoring program by assisting with workshops, snapshots, and related work. This position will also assist the TMDL program with collection of field samples and data analysis. Three positions will be located in the Geographic Information Section to provide on-going support for activities related to watershed planning and assessment required under the legislatively mandated watershed initiative program. One staff position will be located in the Communication Bureau to assist with REAP assemblies, the HUSH program, and the Nature Store.

Funding for this contract comes from state water monitoring funds and Geographic Information Systems funds appropriated under the Environment First Infrastructure Fund, Federal EPA 319 funds, and REAP funds.

Administration is a little bit easier if pulled into a separate contract so we honored that request. At this point, there is one staff position that helps with the IOWATER volunteer monitoring program doing workshops, snapshots, writing reports, and helping with volunteer program. Some of that person's time is also related to TMDL program, they do some data collection and analysis, monitoring. We have three positions in the GIS section, the information section, ongoing activities related to the watershed plan and information on a larger scale like for example helping and serving out to the public. And then there is the position for the communications bureau to help with the HUSH Program which deer hunters providing meat to hungry folks, The Nature Store, essentially the Communications Bureau has another person. The funding from this is kind of an analysis of a variety of funding sources for the IOWATER Commission that is coming from state water monitoring fund that is recreated by the legislature for monitoring via the structure fund. The GIS Commission are also coming from the infrastructure fund under watershed initiative funding and lastly REAP funds pay for the communication bureau to help with HUSH and Nature Store. These aren't exclusively staffed, these are folks that are temporary or long-term temporary position. One thing I'll add that Ken said about UHL is that they all start with state seniority where they are on the merit position, they don't accrue any seniority so this might not have been good for them should come into the state DNR down the road. Any questions on the contract?

Charlotte Hubbell: So we are doing the same stream segments or the same streams?

Mary Skopec: No. Well, that person is helping the TMDLs will be out sampling for the TMDL contracts, they may include some streams that our section is helping to do. We then look at the Iowa River for both TMDL monitoring for example. She helped to do some Dry Run Creek sampling but in general this is just staff support for the IOWATER Program, the GIS Program, and Communications Bureau.

Motion was made by David Petty to approve the contract with UHL for staff support as presented. Seconded by Henry Marquard. Motion carried unanimously.

APPROVED

REFERRAL TO THE ATTORNEY GENERAL

MIDAMERICAN ENERGY COMPANY (COUNCIL BLUFFS) – AIR QUALITY

Anne Preziosi, staff attorney with DNR. On September 25, 2002 MidAmerican Energy submitted a PSD permit application as part of a project to expand its Council Bluffs Energy Center or _CBEC site located south of Council Bluffs in Pottawattamie County. CBEC is a fossil fuel-fired steam electric generation facility. Prior to the expansion, the CBEC plant consisted of three coal-fired electric generating units. The September 2002 expansion consisted of adding one new coal fired boiler (Boiler #4), modifying existing coal-handling equipment, and adding ancillary equipment necessary to the boiler. Nineteen PSD permits were issued on June 17, 2003, based on the applications received by DNR in 2002. On October 11, 2006, (about four years later), MidAmerican submitted PSD construction permit applications for eleven additional emission points that had been constructed without receiving the required PSD permits. Permits for these eleven as-built emission points should have been submitted with the rest of the permit applications submitted by MidAmerican in 2002. Also following issuance of the June 2003 PSD permits, MidAmerican installed and operated permitted equipment in a manner that was out of compliance with the issued permits. The October 2006 submittal by MidAmerican included a request to modify 13 of the 19 issued PSD permits to request these changes. Currently MidAmerican is operating all of these emission points. MidAmerican has submitted a letter dated June 4, 2007, stating that they do not object to this matter being referred to the Attorney General's Office.

Mary Gail Scott: Have they stopped the illegal activities?

Anne Preziosi: They have applied for the permits, which were issued about a week ago and are effective now.

Mary Gail Scott: So now they're legal?

Anne Preziosi: Correct.

Mary Gail Scott: But they never shut them down when they were illegal?

Anne Preziosi: Correct.

Charlotte Hubbell: So what would the fine be if we could have levied a fine on them for their illegal operations. What would the fine have been? Isn't there a daily fine?

Anne Preziosi: DNR has a limit of \$10,000 in administrative fines.

Charlotte Hubbell: But I thought under the code there was a daily fine.

Mary Gail Scott: \$5,000 a day. Right?

Anne Preziosi: \$10,000 a day for the attorney general in this type of action, but DNR could not penalize more than \$10,000 as a whole.

Henry Marquard: Would that be per violation or per permit? There were three permits that were violated.

Lady?: Yeah, per permit per day.

Henry Marquard: I know the attorney general can do, and go to court for that, but administratively there is three permits that are being violated, right? So the question is would each of those be subject to \$10,000 administrative fines?

Rich Leopold: There were 24 violations, right?

Anne Preziosi: 24 permits were involved.

Henry Marquard: So would each of them be subject to a fine from the DNR as administrative action?

Anne Preziosi: Generally speaking, I guess.

Ed Tormey: Your question is could there be 24 separate...

Henry Marquard: 24 \$10,000 fines?

Ed Tormey: Typically we try to wrap an enforcement case into an order when we can and we are limited at \$10,000 for the entire order. I guess we could but when something is that significant, I think the legislature intended those things to be referred to the attorney general and not be 24 separate orders.

Henry Marquard: The interesting thing here is that the result of what they did, they are emitting less pollution. I mean it's not a case of somebody operating non permitted equipment so that they could pollute more, it's somebody operating non permitted equipment that polluted less.

Mary Gail Scott: And then saying, "Oh, I know we were supposed to get a permit; but we didn't. Too bad!"

Henry Marquard. That's not what they were saying though.

Mary Gail Scott: I think so.

Henry Marquard: How long was the process. How long did it take for us to; when did they request the permits?

Charlotte Hubbell: It's all in here.

Rich Leopold: I don't know how much of this detail you want to discuss and we certainly can answer any question you have, but in October 2006 we legally had six months to process these applications for as-built permits. So we were within our permitted period when these violations took place. I mean our permitted time period of having response to them.

Henry Marquard: I'm not criticizing that. I was trying to see, yes, they violated the law, that's clear.

Mary Gail Scott: Knowingly and willingly. Then after they were told they were violating and that they needed to shut down, right?, they didn't? So they said, "\$5,000 a day. I'll break."

Henry Marquard: Less emissions to the environment.

Mary Gail Scott: Right. That's the EPA and the DNR's charge is to administer those programs that are written down and part of that is the record keeping and that's the pain-in-the-butt part; but it isn't unknown and somebody as big as MidAmerican with as many locations as they have knew the rules and they said, "We can save money, we can save emissions, and we want to do it now, and we'll just skip this procedure because our fine abilities are so low that..."

Rich Leopold: They didn't know it was going to be less. I mean we didn't have it modeled out that it was going to be less yet so it wasn't permitted. And bigger than that, the question that we're diving into is: Yeah, the environmental performance was better, which is a good thing and I'm happy about that, but what kind of precedent do we set if we say, well, we've got permit requirements that you must do unless you don't, so there were definite procedural violations that had foreknowledge that they absolutely knew what they were doing as they were going through it.

Henry Marquard: And this once again reflects the absolute idiocy of the present situation that restricts the limits of the DNR's authority. And once again it's an extraordinarily good example of why the legislature needs to revisit this, why the legislature needs to repass the bill that Governor Vilsack unwisely vetoed and let's correct the situation once and for all. I know this is a regular Henry Marquard statement on this issue. I am hoping one of these days that I will talk to a number of legislators, and ABI and water pollution control associations, I'm hoping one of these days.

Motion was made by David Petty to refer MidAmerican Energy to the Attorney General's office. Seconded by Mary Gail Scott. Roll call vote went as follows: Henry Marquard – nay; Sue Morrow – aye; Darrell Hanson – aye; David Petty – aye; Mary Gail Scott – aye; Charlotte Hubbell – aye. Motion carried.

REFERRED

JOINT STATE AGENCY AGREEMENT BETWEEN THE IOWA DEPARTMENT OF NATURAL RESOURCES AND THE IOWA DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP-DIVISION OF SOIL CONSERVATION

Patti Cale-Finnegan presented the following item: Environmental Protection Commission approval is sought for a joint state agency agreement for administration of the Local Water Protection (LWP) program and stormwater best management practice (BMP) efforts. These programs are part of the Clean Water State Revolving Fund's non-point source pollution control loan offerings.

IDALS-DSC has administered the LWP program since 2004 through a contract with DNR. Through IDALS-DSC's efforts, more than \$7 million has been issued in loans for soil, sediment, and nutrient control practices.

With the proposed agreement, IDALS-DSC will continue its work on the LWP program and add new services for developing, promoting, and administering loans for post-construction stormwater runoff control BMPs as well.

The roles of each agency will be:

- The DNR will establish program rules, establish set-aside amounts and interest rates and terms in the Clean Water State Revolving Fund (CWSRF) Intended Use Plan, and sign off on IDALS-DSC requests for cost reimbursement.
- IDALS-DSC will work with Soil and Water Conservation Districts to promote the LWP program and stormwater BMPs, develop application materials, approve project applications, interface with lenders on loan approvals and practice certification, and project loan demand for establishment of set-aside amounts.

The agreement provides IDALS-DSC with reimbursement for administrative expenses. The agreement allows up to \$107,760 for fiscal year 2008 and \$116,380 for fiscal year 2009. These amounts cover personnel, travel, supplies, and indirect costs. Funds for the agreement come from Clean Water State Revolving Fund administrative accounts.

Henry Marquard: The agreement is between the finance authority and the DNR?

Patti Cale-Finnegan: Yes.

Motion was made by Henry Marquard to approve the joint agreement as presented. Seconded by David Petty. Motion carried unanimously.

APPROVED

The Commission voted to go into closed session to discuss strategy on some pending litigation.

CLEAN WATER AND DRINKING WATER STATE REVOLVING LOAN FUND – 2008 INTENDED USE PLANS

Patti Cale-Finnegan presented the following information: Commission approval is requested for the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Intended Use Plans (IUPs) for FY 2008. The CWSRF provides low-interest loans for wastewater and storm water infrastructure improvements and non-point source water quality projects. Since 1989, the Iowa CWSRF has committed more than \$558 million for water quality projects, including \$23 million to date for non-point source projects. The DWSRF, which makes loans to public water supply systems to protect public health and improve infrastructure, has exceeded \$230 million.

In state law and under an agreement with the U.S. Environmental Protection Agency, the CWSRF is administered by the Iowa Department of Natural Resources (DNR) in partnership with the Iowa Finance Authority (IFA). DNR prepared the project priority lists and program plans, with financial strategies and information provided by IFA.

The FY 2008 IUPs include plans of action for the coming year, including goals and objectives, an analysis of current and projected financial capability, financial management strategies, the project priority lists, discussion of set-aside programs and efforts, and planned uses for administrative accounts.

A public meeting was held May 3, 2007 to receive comments on the proposed IUPs. No oral comments were provided at the hearing. The written comment period closed on May 9, 2007. Two written comments were received. A responsiveness summary is attached.

Darrell Hanson: Are the clean water projects listed as well?

Patti Cale-Finnegan: Yeah. There are two plans here. Drinking water is first; clean water projects are listed at the end.

Darrell Hanson: No, I'm not just looking for Manchester. The Polk County proposal under the clean water, the one we've heard some concern about; what is that listed under, what is that called?

Patti Cale-Finnegan: It's on page 19. It's the last project on the list.

Darrell Hanson: Oh, it's called Polk County. That's clever! Okay.

Patti Cale-Finnegan: They applied for a plan in Iowa for a project that to our understanding at this point is that it would be eligible and the issue that I think that group wanted is whether or not the SR Fund speculative development and in fact we cannot and so our rules actually say projects for the primary purpose of speculative growth, in other words running a pipe out to an area.

Darrell Hanson: If we build it they'll come.

Patti Cale-Finnegan: You hope, yes. That's not eligible. We did meet with Polk County and their representation of the project to us was that this is primarily to tie in currently unsewered areas that housing is on separate systems and to connect Polk City to the wastewater reclamation _____. So there is an area-wide plan to connect more areas to Polk County on the map to the metro area into the wastewater reclamation _____ regional wastewater treatment system and so that according to what we've been told by them is part of that plan. There may be other impacts from this project and

in fact Polk County officials according to the record in the newspaper that they anticipate there to be major development in some of these areas as a result of these sewer lines so

Darrell Hanson: So if I understand the situation correctly, the fact that the project might encourage or at least facilitate new development is not relevant to your decision if it can be justified, if the total dollars, can be justified based on other goals that are consistent with the program. If it helps new development that's just gravy but that's not what you use to determine whether they get the money or not.

Patti Cale-Finnegan: They can justify that the primary purpose of the project is for addressing water quality issues, unsewered areas, inadequate treatment in already existing conditions, you know, fulfilling this area-wide plan to hook communities into WRA, then it will be eligible.

Darrell Hanson: Our approval doesn't necessarily mean they'll get approval. It just allows them to get approval if you find their project meets your requirements.

Patti Cale-Finnegan: It allows them to use our funds to plan and design the actual project.

Darrell Hanson: Most of you probably haven't seen it yet 'cause you haven't been home, but I saw Henry's response that the rest of you will see when you read your e-mail. I thought Henry had a good response.

Henry Marquard: Basically that this is primarily a local government issue, and it's not our goal to get involved in local government issues. But it does raise an interesting question though. You have a governmental group like Polk County that wants to move ahead with this and there is citizen opposition to it, who does have the final say so over whether or not that particular plan is approved?

Patti Cale-Finnegan: First of all I just want to mention I was contacted by this group and I encouraged them because I thought was important that they have an opportunity to do that. There will be other opportunities in all processes for them to weigh in. This project will have to go through environmental reviews and as part of that we look at the use of farmland. That's one of the clearances that has to be attained is to make sure that's a paper-bound step, so I think even with SRF there will be opportunities for the public and organizations to have input into the process. Our determination of eligibility for SRF will be based on what the facility plans look like and what is the primary purpose.

Darrell Hanson: As far as Henry's question goes, that's a question I had to face a lot when in my legislative days, I would have local officials contact me wanting me to present to help them to get a CWG grant or something which I really couldn't help them do but I could write a letter of recommendation or something. Or at other times maybe help with some regulatory thing and there might be citizens who would then be opposing that move and my philosophy always was that the only people who really can speak for the community are the people whom the community has elected. That's how I answered that question, because you can almost always find a group of people that will have some opinion or another but the only ones who really speak for the City of Manchester are the people who get elected to the city council or the only people who can speak for Polk County are the Polk County supervisors and so that's how I would resolve that issue is that they're the ones who were voted into office.

Rich Leopold: I might say too, I think that it's right that planning and zoning does have to have them locally as far as what they're going to do, but we do have some pretty strong moral oversight of the State Revolving Fund Program and part of this I think is the evolution of programming. You know we've

done from four years ago to where we are today in SRF Funding, everything has changed. Patti and others have done just a tremendous job at increasing our capacity and potentials within that fund. We are going to eventually come into a place where we're going to have to competing interests and there's not going to be enough for everybody and that's when we have to make real sure that we're using those SRF's as they were intended to be used so that we're not facilitating development that we're getting safe drinking water and clean drinking water.

Darrell Hanson: That's why I think it's appropriate for us to say here is what we're using the money for. We won't use it for the purposes, but if it gets down to the question of is it a higher priority in Polk County to deal with the existing clean water issues around the Polk City area or deal with some issues inside the City of Des Moines, which is one of the messages I got, that is a legitimate issue. But that's an issue that I think needs to be resolved at the level of Polk County government and then if they come up with an application for those funds, that meets the criteria that we have set and rightly so we have said this isn't going to fund speculative development. That's not what it's there for. If it meets those criteria then I don't think we necessarily reject it because there is a group that opposes it.

Chuck Corell: We may someday, hopefully not in too distant future, where we get to the point where the demand is such for the fund that we have to prioritize the project and that was on the criteria of having the rules of water quality benefit.

Henry Marquard: At the end of the day the authorization to actually spend the money comes to us in a plan that has to be approved, right? So that is my question I guess is the ultimate question, the ultimate decision comes here whether or not to approve it but Darrell is exactly right. For example, one of the issues here: should Polk City have access to the IWUA. That's not an issue for the State of Iowa, the government of the State of Iowa to decide. That's an issue for Polk County and it's clearly a local issue that we would as an arm of the state, I think, be overstepping. You guys did a good job putting this together.

Dave Petty: We did a new one three years ago \$4.2 million for 3500 people, but that was three years ago so it's probably six now.

Charlotte Hubbell: \$4.2, okay. This is ten that they applied for and with fewer people.

Darrell Hanson: Sometimes it depends on what problems they have to deal with too; for example, Manchester is doing a sewer upgrade for a town of 5,400. Elkadar is doing a sewer upgrade; they're a town of 1,500 and theirs is going to be more expensive than ours because of the nature of the standards they have to meet, location, they are right on a high quality waterway and we're not, to say the least.

Henry Marquard: The whole matter of bypass will open up the door to some interesting requests and I'm sure we are going to be seeing them in the near future.

Motion was made by David Petty to approve the Clean water and Drinking water SRF 2008 Intended Use Plan. Seconded by Sue Morrow. Motion carried unanimously.

APPROVED

Chuck Corell, Water Quality Bureau Chief: The Commission is asked to approve the attached Adopted and Filed Notice to amend Chapter 64: Wastewater Construction and Operation Permits of the Iowa Administrative Code (IAC).

These proposed rules renew the general permits 1, 2, and 3 which are for storm water discharges for another five years. According to statute, general permits issued by the Department must be renewed at least every five years. The general permits expire October 1, 2007.

The following changes are proposed:

- Renew general permits Nos. 1, 2 and 3 to be effective 10/1/07 until 10/1/12.
- Maintain current fee structure.
- Add notification requirements when permitting responsibility has been transferred.
- Prohibit commencement of construction activity until a permit authorization has been approved by the Department.

General permit 1 is for industrial activities, general permit #2 industrial activities specifically construction where the soil is disturbed, and general permit #3 is for asphalt and concrete portable batch plants and the set up and the storm water associated with those kind of facilities. The new and effective date for the general permits will be October 1, 2007, so then we will be back here before October 2012 to renew this one more time. This rule does not change the fee structure. We are looking at that. We are in the early stages of planning our public participation in that process. There are some changes that we are making to the rule and I want to highlight. We are requiring that if a developer sells a lot and that person who buys the lot agrees that they can transfer responsibility for storm water permits to the person who owns that one lot and then they are not told the adults are reliable for that lot, _____ responsible for the storm water permit for that lot. We are also changing the part of the rule that right now that says that you can start the construction in general permit #2 24 hours after you submit your notice of intent to be covered under this general permit. We are changing that because when did they submit to us? Was that the day they put it in the mailbox, is that the postmark date, is it the date we received it? It's somewhere up in the air so we're changing that. Our typical turn-around time on these is less than two business days so we change this so they actually have to get the approval back from us before they can start construction. We have a public comment date to receive some public comments. I do want to point out one change that we made in response to the comments. On the part of the rule where we got the transferee and the transferor as far as these lots go we put in some extra language to make it clear that it is just for that lot that they sold; that's what they are getting out of not for the whole development. So you transfer ownership of one lot and the responsibility of the storm water goes for just that one lot. So we made that clear. Otherwise the rule is the same as proposed.

Charlotte Hubbell: Is there a measurement that is given as to what size lot it's applicable?

Chuck Corell: Yeah, storm water permits are required for anything over an acre.

Darrell Hanson: So it's the amount you disturb, not the size of the land in the project, right?

Chuck Corell: Right. So if you disturb two acres of your development and then you sell off three lots, do the lots have to be covered under the storm water permit? I rephrased that, I think that's kind of your question.

Charlotte Hubbell: Right.

Chuck Corell: Yes, I do have the answer. I'm on page 406, at the bottom, item 3. It's a rather long sentence but the part at the top of page 5 both the permittee and the transferee shall be responsible for the compliance of the provisions of the general permit for that portion of property that has been transferred including when the transferred property is less than one acre in size. So if it's part of the development that is larger than one acre that whole development will continue to be covered by a storm water general permit until the whole development or at least the pieces that have been transferred are fully stabilized and the soil has been fully stabilized and the permit is no longer required. For example, as soon as they lay sod, if it's a house, as soon as they lay sod, then the requirement to have the permit goes away because then the soil is stabilized.

Charlotte Hubbell: So is this a way to avoid storm water run off.

Chuck Corell: No.

Charlotte Hubbell: So you're just passing it on to the homeowner, if it's a home development, you're passing it on to the homeowner?

Chuck Corell: Yeah, it could be the homeowner or it could be the lot owner. It might be just the home builder that buys the lot first. But if you carve off a lot out of your big development, that lot has to be covered by somebody's homeowner permit. The developer can keep his permit to cover the whole development or he can transfer just that lot to whoever buys that lot. Well then whoever buys that lot has to maintain the storm water permit for that lot until the soil has been fully stabilized and in the homeowner situation it would be when they lay sod or when they plant grass and it gets tall enough to control the runoff, then the storm water permit is not required anyway in that case, because this is just for construction activities where you're disturbing the soil. If you disturb the soil and have to have a permit until the soil is stabilized.

Motion was made by Henry Marquard to approve the final rule – chapter 64 as presented. Seconded by David Petty. Motion carried unanimously.

APPROVED

AMENDMENTS TO CHAPTER 135 - TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

Wayne Gieselman presented the following item: The Department proposed and the Iowa Legislature passed legislation (SF 499/HF792) (Iowa Act) this session granting rulemaking authority to the Commission in response to provisions of the Federal Energy Act of 2005 (Federal Act). The Federal Act requires States to implement several policies consistent with EPA issued guidance in order to maintain Federal funding and the Department's "state program approval" for the UST program. The Iowa Act requires the Commission to adopt rules requiring that all new underground storage tank (UST) and piping installations and replacements after August 1, 2007 be constructed to provide secondary containment (i.e. double walled tanks and piping) if they are within 1,000 feet of any public water supply system or a potable drinking water well. The Iowa Act also requires that under dispenser containment systems be installed whenever dispensers are replaced. The Iowa Act requires the Commission to adopt rules implementing a process to prohibit the delivery of

fuel to UST facilities which are determined to be out of compliance with designated operation and maintenance requirements such as release detection, overfill and spill protection and corrosion protection. The EPA guidance applicable to these policies and the Iowa Act is attached for reference.

The Iowa Act also requires the Commission to take over administration of the UST installer and installer inspector licensing program which has previously been administered under rules adopted by the Iowa UST Fund Board. The Iowa Act requires the Commission to adopt the UST Fund Board's existing rules by emergency rule making no later than August 1, 2007. The Commission is then required to initiate a notice of intended action to fully implement a licensing program applicable not only to UST installers and installer inspectors but person who remove and test USTs.

The Department intends to present these rules for adoption at the July Commission meeting in order to satisfy the requirements of the Iowa Act and the Federal Act.

Rich Leopold: Wayne, if you could take just a moment for new commissioners who might not know what double barrel means.

Wayne Gieselman: Normal rule making takes us about six months; move through the public hearing process, we move through at least two times, usually three times in front of the commissioners. Emergency double barrel does away with the hearing requirement, does away with most of the waiver requirement, and leaves ARRC with one opportunity (ARC being Administrative Rules Review Committee). The legislature has an opportunity to review these, but the code rules take about 30 days for adoption. The only times we use this is in this kind of an instance when the legislature says you must do this; it has to be done by this period of time. I think there are other requirements that we can do it if there is no major impact on Iowa citizens.

Darrell Hanson: By double barrel you mean you are filing emergency rules and you're filing a regular notice of intent of action to adopt as regular rules.

Wayne Gieselman: We will have two coming back, the first of which I just kind of described as secondary containment for new installations for underground tanks; usually gas tanks is what we're talking about. The second part of this rule or double-barreled notice we are dealing with is an underground storage tank installer and installer inspector licensing. That is currently done by the Iowa Underground Storage Tank Fund Board. We will be taking over that program; the legislature directed us to take that program. The USTFund was perfectly happy for us to take that program. In essence what we would be doing is taking the rules that are currently in effect and transferring them to DNR set of rules so there will be no changes to the existing rules simply be implemented by the DNR.

INFORMATION

USE ASSESSMENT AND USE ATTAINABILITY ANALYSES (UA/UAA) PRESENTATION

Chuck Correll presented the following information: The example UA/UAA's and supporting information received by the Commission via CDs are actual documents for various possible recommendations associated with this effort. These UA/UAA recommendations will be proposed for rule making in the near future as part of the ongoing review of Iowa's WQS.

The Commission received the following UA/UAA examples for their information:

Recreational UA/UAA:

Skunk River - Class A1 Primary Contact Recreational Use – verified Class A1 designation

Deer Creek (Tama Co.) - Class A1 Primary Contact Recreational Use to Class A2 Secondary Contact Recreational Use (previously a “designated” stream)

East Fork Big Creek (Decatur Co.) - Class A1 Primary Contact Recreational Use to Class A2 Secondary Contact Recreational Use (previously a general use stream)

Prairie Creek (Benton/Linn Co.) - Class A1 Primary Contact Recreational Use to Class A3 Children’s Recreational Use

Deep Creek (Clinton/Jackson Co.) and Wapsinonoc Creek (Muscatine Co.) – Class A1 Primary Contact Recreational Use to Class A2 Secondary Contact Recreational Use with some depth issues.

Aquatic Life UA/UAA:

Wildwood Creek (Floyd Co.) - Class B(WW-1) Warm Water - Type 1 – verified Class B(WW-1) designation

West Buttrick Creek (Webster Co.) – Class B(WW-1) Warm Water – Type 1 to Class B(WW-2) Warm Water – Type 2 (a perennial stream according to USGS)

Unnamed Creek near Corydon (Wayne Co.) – Class B(WW-1) Warm Water – Type 1 to Class B(WW-2) Warm Water – Type 2 (an intermittent stream according to USGS)

Unnamed Creek near Hull (Sioux Co.) - Class B(WW-1) Warm Water – Type 1 to Class B(WW-2) Warm Water – Type 2 (an intermittent according to USGS)

Sewer Creek (O’Brien/Clay Co.) - Class B(WW-1) Warm Water – Type 1 to Class B(WW-2) Warm Water – Type 2 (an intermittent and perennial stream according to USGS)

Coon Creek (Jefferson Co.) - Class B(WW-1) Warm Water – Type 1 to Class B(WW-3) Warm Water – Type 3 (a perennial stream according to USGS)

Unnamed Creek near Pikes Peak State Park (Clayton Co.) – General Use Segment – verified as general use

Due to the size of the documents, all attachments are available to the Commission on the enclosed CD and are available to the public at: <http://www.iowadnr.com/epc/index.html>.

We have some examples of ones for aquatic life, some for recreational use, some that were downgraded from the highest use to the next highest, I think there was even a couple where we decided they ought to stay where they are. Trying to give you a broad overview of what these things look like, what kind of data are we collecting. I know we talked a lot in plans. We have protocols of what we're going to do, not only here's what we've done, or here's what we're doing. The idea I think, at least a lot of the ideas

is to give you some comfort as to what it is that we're doing. One thing that we also need to sit on before I let you go today, like I'm going to hold you here, is we also need to discuss and decide how you want to see these UAAs. You are going to see hundreds of these, literally hundreds, maybe over a thousand, in the coming months and we need to figure out how is it that you want to see those so that you can make a decision whether to approve them or not as a rule package to go forward so a couple of things on the agenda. I'm going to turn it over to Adam. He's our expert on what actually we are doing and what the fuel stuff looks like and those kinds of things.

Adam Schnieders: I work on a lot of these things trying to become an 'expert' in UAAs so I hope you guys got all the material. Our plans are to just go briefly over the designated uses one more time for some of the new commissioners and just talk about some of our assessment considerations when we look at these when we are analyzing our data and talk about the update Chuck mentioned: How many UAAs we're doing, how many we expect to get to you, then a Q and A at the end as maybe we could address some of the UAAs we sent you plus the protocols, things of that nature.

Again, water quality standards are basically the goals of Iowa's waters. The standards are composed of three primary things: designated the uses to be made of the water, such as aquatic life, recreational use, and drinking water, things of that nature. Of course, by setting criteria to protect those uses whether they're numeric or narrative criteria. Then of course by preventing degradation of water quality which is commonly referred to as 'antidegradation'. Of course that is kind of a hot topic for some of our groups so that will definitely coming down the road sooner or later than I'm imagining; but that's not exactly what we're talking about today. We are talking about the designated uses and that's what these UAAs are focusing on. 40 CFR defines designated uses as those uses specified in the standards for each water body, the water body segment whether or not they are being attained so it's not whether or not they are actually occurring, but if it is possible? That's kind of how we approach it when we look at UAAs. Iowa has three recreational uses: A1, A2, and A3. Put simply A1 is where you can get whole body immersion, A2 is incidental contact with the water, given shoreline activities such as trapping, also children's play – this is where children's play is common in the water. A little more detail: examples of class A1 water which is primary contact recreational use, full body immersion, prolonged and direct exposure and contact with that water – swimming, water skiing, things you see there would be classic example of A1. Also, if you want to see the Mississippi River at a different spot rather than Muscatine like Pikes Peak State Park. That's a really good picture but I don't think you can see it very well. The Skunk River. This is one we sent you guys as one that was a class A1.

Class A2 – secondary contact, incidental contact or accidental contact. The probability of ingesting the water is minimal. Things like fishing, trapping, wading, where it's not full-body immersion, with criteria protecting those types of uses.

Other things we look at is people in the proximity of that water: fire pits on sand bars is very common. We see that people camp out on sandbars and then maybe use the water to wash up pots and pans. Of course we have the fishing lines and the power lines this is one of our #1 indicators. There's a lot of bad casters in Iowa. We see this a lot so we try to document it.

Mary Gail Scott: This always gets down to my concern which is if you go out and see mud like you did but it doesn't have ATV tracks in it. Are you going to think this could be recreational because people could drive along here.

Adam Schnieders: Of course. We're looking at what's possible. So even if we don't see evidence in some of these cases, right here – Brushy Creek, A2, we don't find a single shred that people are having

been here, there is no sign beyond the pasture which is upstream, but is that type of use attainable, is that possible on that stream? We feel that it is, and so in this case while it may not be deep enough to support primary contact we're recommending type A2 use even though we didn't see a single bit of evidence suggesting that there was use.

Mary Gail Scott: Is A2 more protective than A3?

Rich Leopold: No, actually A1 and A3 carry the same amount of protection. A2 is a little less stringent, but it does carry the criteria as protective of those types of activities.

Chuck Corell: It really gets to the point where we find that kind of evidence that somebody is doing an A2 kind of use, it's a slam dunk, we don't have to look, we don't have to look for any less than A2 because A2 is there.

Adam Schnieders: Here's another good example.

So how do you distinguish between swimmable and partial immersion?

Adam Schnieders: Right now we are using, we have two criteria, one is a maximum depth meter or 39 inches for A1. The next criteria is ½ a meter, 19 inches, of 50% of the reach throughout the year.

So even if the tree line is so dense that right now no one could get through it, that's an access issue and you don't consider that when determining whether or not it could be A1.

Rich Leopold: You remember the six reasons of the federal rules? Access is not even in any of the rules.

Adam Schnieders: A3. This is a little different; kids play. The way our designated use is worded where kids play is common. So attainability here is a little different. Here we're not necessarily looking at attainability here we're almost looking for proof of existence. Is this actually occurring. There needs to be proof to show that this use is common. Only a preponderance of evidence that shows that this is common, if we actually apply that if we see just a few things, we actually need a lot of evidence for us to feel that it's appropriate to designate class A3. Typically we do see that evidence in county parks, residential and urban areas and of course also in definition it needs to be a defined stream channel with visible evidence of water.

Female: Is this a state designation only or is this actually a federal definition?

Adam Schnieders: Iowa is one of the few states that has it across the whole country. I believe there is one other state that actually carries it.

Female: Because this is different to me. What you're looking at is a snapshot of today saying we're never going to have a city develop 50 miles outside nowhere so therefore we're not going to be protecting that stream up there for children to play in so that seems upside down to me that we are only going to protect an existing use for today for children.

Adam Schnieders: That's not necessarily true. Every perennial stream and intermittent stream with perennial pools in the state is A1. So every criteria in the state is protected the same as A3, so until we have gone to a UAA we find that out. The point is that if we don't have enough evidence right now to

say that's A3, we are going to leave it but the things we realize that it's a snapshot that's why these are recommendations. If more evidence comes, say during a public comment period, hey look, you know a lot of kids play down here but we range to get that information as a part of the field assessments.

Female: It's still a snapshot.

Adam Schnieders: That's what I've been trying to say, we realize it's a snapshot but the public comment period will be useful, someone from the town of Atkins may say my whole family goes down there. We get a lot of testimony saying that; well in that case we have the evidence saying we should protect for A3 in this spot.

Female: It's still a snapshot of today, not looking into the future; not looking into attainable uses or uses that it might move into. My problem with this is that we're looking at today and let's protect today's use and let's not look at an attainable future use in case the state grows in population and we actually start getting out into the excerpts .

Adam Schnieders: We need to be flexible in this case because we have a triennial review every three years where we revisit the standards such as criteria and designated uses.

Female: Sometimes it takes us 12 years to get to that triennial review.

Adam Schnieders: We're hoping to get caught up to that point we are able to get in that position where we can operate on automatic pilot and be able to take all this information in and adjust the standards quickly.

Female: Okay. So let's look at that scenario. We have a stream that is not being used by kids. Maybe it is recreational. So there's some degradation that's being allowed for that incidental contact and then in three years now we have a town that has grown up in this area that is protected at A2 and we have a triennial and the triennial review says gee, there's kids in there. How does that fit your scenario?

Adam Schnieders: Then we go ahead and look at the unit and assess the water by segments and if A3 is appropriate, redesignate it.

Female: And so we've had kids now swimming in that for three years or two years in an unprotected stream.

Adam Schnieders: A2 does carry protection for secondary contact so that activities that kids do would be protected: fishing, wading, splashing around. That kind of stuff. Incidental contact is there, but frequency is the key. If they use it frequently, we want to make sure it's protected. To say it isn't protected isn't necessarily true.

Female: Protective of children. If it were protective of children it would be the same as A2. Instead we've decided it's the same as A1. So A2 isn't protective of kids and if kids start playing in that stream at A2 or worse yet BWW which we haven't gotten to, then my concern is we're protecting for an existing demonstrated use and not again for a potential attainable use.

Male: I think our difference is what attainable, what's possible, what do we plan for? What we're trying to say is that the way that A3 is defined is that you have to have a very high potential that there are kids there now and there is nothing in that A3 destination that allows us to say some day kids might play here.

Female: Why not?

Male: Because that's what we want it to do when we protect these areas we are looking at; where is it when the kids play? All our current streams are going to end up with at least an A2 which includes protection for any kind of recreation near the water; incidental/accidental contact. But when you have kids that are playing near the water, they're still not swimming but just because they're kids their hands go in their mouth a lot they splash around/roll around where maybe adults don't, so there's a little bit of difference there that we are trying to separate out from the rest of the world and apparently we're fairly unique across the United States for doing it. But we want to be able to, we want that very high potential, we don't have to see kids swimming there or playing in there, but we want to know at least that that could be common even though we're not there to see it all.

Henry Marquard: What is, I mean, the standards?

Male: A1 and A3 are the same, right?

Male: The criteria are the same.

Henry Marquard: I guess what I'm thinking is why A3 because if it's primary contact what's the difference if I have contact with the water or my 10 year old goes down there and does it?

Darrell Hanson: A1 is for assuming there is going to total immersion, right? And A3 doesn't require total immersion.

Henry Marquard: So A1 is basically just if somebody is going to swim in it.

Right. Yes.

Male: And you can almost think of A3 as a specialized form of A2 use.

Henry Marquard: That kids will go in the water and adults won't.

Male: Or that they'll get their hands in their mouth more often and are at a higher risk of ingesting water. Kids have a higher risk of ingesting water while they're playing near it than adults

Female: A1 and A2 are based on stream characteristics that say: yes, someone could swim here, someone could water ski here, or yes people could fish here if they really wanted to. A3 is based on we have evidence that today kids are playing in this stream and that's my problem. Attainability to me says highest and best use. We've had this discussion several times. On A3 we seem to be falling short of that consideration from what I'm seeing.

Darrell Hanson: I don't see it that way because when we think about A1 requires certain characteristics of the stream even if people aren't currently swimming in it. To me A3 requires characteristics of that stream on of which needs to be the kids are in the vicinity, because if the stream runs out in the middle

of an uninhabited area, yes, someday kids will be playing there but we know today that stream does not have a characteristic of having kids around it as kids aren't hiking miles out into the weeds to play along the river. To me it's probably not a perfect analogy, to me it's the difference between me saying we will set the speed limit at such and such a level if the traffic is high vs. we'll set the speed limit at such and such a level if some day we think there might be a lot of traffic there and I guess I'm not as concerned about that as long as we are cleaning out streams where there are kids playing.

Female: But they are already playing in the stream by that time.

Darrell Hanson: Right. But in terms of where we put our effort I don't know if we should necessarily be classifying every stream that is around no population center whatsoever as a potential place for children to play because someday in three or four of those cases there will be kids in it.

Female: Oh I think we should. I think that's why we went top down instead of bottom up is so that we could designate all of our waters as meeting that highest limit. I think that is what we decided.

Henry Marquard: I think we may get to this later on maybe, but the question is I see very few streams that we would ever remove from A1.

Female: Exactly.

Henry Marquard: I mean if there is any chance of anybody coming anywhere near there I think it's got be an A1 or A2 stream.

Female: And protecting it after you see kids there in three or four years is shutting the barn door after the horse dies.

Male: But please remember that streams carry A1 prior to us changing it to A3. So those were A1 streams already carried that level of protection. If it's changed to A3 it's just better classified of that use.

Female: Let's don't pretend that very many of our streams right now have A1 protection. We're just putting that into place.

Male: This is state rules.

Female: Until the last year and it hasn't been federally approved. It is where we're headed now. That's why we're doing these use attainability analyses so let's don't sit here and say that the streams are protected all their lives at the highest level because by law they haven't.

Female: Wait a minute. Maybe what we need is a definition of A1, A2, and A3. Is A3 a higher definition?

Male: A1 and A3 carry equivalently protective criteria.

Darrell Hanson: I guess the point of what Henry said, we are really talking about streams that would not meet the class A1 criteria otherwise and are not around population now. I'm not sure how many those are. If they are out away from people, they're not going to meet the class A1 criteria. There's just not going to be a lot I don't think.

Male: Try to keep in mind also that A3, how many states have that so other states that may use the same protocol like Kansas and Missouri; they may say those are A2 uses. We have to go in and say it's not deep enough but we now kids play up there and we want to protect it to the same level and we have that ability and the flexibility where other states may not. So we have the ability to provide additional protection.

Female: I'm a little concerned that we're only worried about urban kids and not farm kids. Because you said there had to be a lot of preponderance of efforts or whatever, that there were children at the site on a regular basis doing all kinds of things. Well what if our children actually listened when we told them not to disturb, what if they go down there and really mess around a whole lot and leave a whole lot of evidence and they picked up their candy wrappers and you know they didn't do those kinds of things and yet they were walking through that water. We've got farm kids that walk through it from one side to the other to go get their pony.

Darrell Hanson: All of us were kids once. Then all water in the state should be A3. You know that's what it would have to be. That would include streams that were created only because of discharge from a sewage plant. That would include lagoons that cattle are feeding in; having been a kid that once played in those not knowing any better. If that's where we go, that's where we'll be going.

Female: I thought we did.

Male: That was true, we'd have to change the designated piece. That use is explicitly worded so say that kids use IS common. Not that it could be common

Darrell Hanson: That's what we adopted is that kids use IS common.

Adam Schnieders: Kids use is common so you have to show that it is. That's why we adopted it that way to provide that additional protection to be site specific while still have flexibility to go with A1 and A2 where appropriate. Recreational uses were changed 2001. That was the idea.

Okay, we can go on to aquatic if you're ready?

As you know we have plenty of aquatic-life uses. The ones we are primarily focusing on are WW1 and WW2, put simply large streams, small streams, Intermittent streams with perennial pools. We have lakes and wetlands, cold water and cold water 2 which we are not addressing. We are also looking at general use streams as a result of these assessments. Keep in mind that a lot of these assessments we are doing for aquatic life are streams that are previously classified as general use that did not carry a aquatic life designation. They all for the most part carry a WW1 now if they are perennial according to the USGS 1:100,000 DLG data set.

Here's some examples of WW1s. These are typically large interior rivers. These are just types of some of the designated use descriptions: large interior rivers, border rivers, warm water aquatic life. Capable of supporting and maintaining a wide variety of life, including gamefish species for their full life cycle.

Female: So could this be both an A1 and WW1?

Adam Schnieders: Yes. For any river. Except for the Mississippi it carries A1, WW1, HH, and Class C; so it has four designations.

Here's some examples again. . . .

Female: So, not specific to this, the one you talked about that was effluent dominated stream, were any of the ones where you say there's a compromised habitat for aquatic life, if we looked at those saying the highest attainable use regardless, because you're not allowed to look at habitat or chemical impairment, right, like if you can't look at the stream and say _____ so it can't support aquatic life full cycle right now

Adam Schnieders: Yes you can, but we aren't trying to necessarily to do that, we kind of use the combination.

Female: So that's primarily been your criterion for determining the VWs is flow.

Adam Schnieders: General use segments, intermittent streams do not support aquatic community year round. . . .

Female: I have to give you one comment. I can tell you have done a tremendous amount of work and it's really a nice site and when you get to where you're going it's really informational and I really appreciate all that. Now don't get me wrong with what I'm going to say. I think when you automatically click in, it automatically sorts them by their number, the stream number, the lake number, the whatever that magic number is that you assign to bodies of water. I think that's the way it comes up and I think for the average person, they want to be able to go in and type in Cedar River. And I think you can, but you have to go over and change it from the numbers. I think for the general public at least on my computer when I was bringing it up they all come up sorted by number.

Darrell Hanson: I agree.

Male: There are three ways to search here by facility, by city, and by stream. If you click on searching by stream and you type in just the letter "C" it lists everything that starts with a "C" in alphabetical order.

Female: I think the default comes up by stream segment.

Adam Schnieders: I'm not sure. There might be a glitch.

Female: I'm not sure what it is. All I'm saying is if that's the way it is for most people they have to be smart enough to figure out how to go over and find so that they can do it by the name of the stream.

Adam Schnieders: That doesn't sound right. Maybe I can give you a call on that and you can walk me through. That doesn't sound right because I don't think we put numbers in there so I wonder where those numbers are coming from.

Darrell Hanson: I haven't seen the website, but I know what you're trying to say is that when you looked at it came up sorted by segment number.

Female: Actually I pulled it up several times.

Female: You're assuming that most of the people who are going on there are cities that are concerned about what they are doing to the stream.

Adam Schnieders: That's why we put search by stream so that if you are interested in the Skunk River you can go to search by stream, type in Skunk, and find Skunk River.

Female: What is the administrative process here? If the presumed use is A1 and it turns out to be A1 and be WW1, we don't have to do anything further administratively? That met presumed uses and so it can go into permitting and be

Adam Schnieders: It's not a rule change.

Female: If the presumed use is A1 and it comes out to be A2 or BWW2 or 3 or whatever, some sort of a rule making process is required and what is the process required and what is the process we go through for that?

Chuck Corell: That's what we want to talk to you about.

Female: Let me say that I have not had a chance to look at; I couldn't open the disks that I was sent and my habit is to look at it the Sunday before the meeting and I didn't have time to go to the web page but I'm really happy with the things I'm hearing, I feel like some of the concerns that I had have been addressed as far as what we're looking at and I'm sitting here internally debating the child thing because had you not brought it up as a special category, I probably wouldn't have thought of it. So I'm thinking "well, so do you punish somebody for trying to really protect kids or do you, I'm sorry, I do this, I think out loud, or do you go with the attention which is to provide the extra protection for kids." I'm debating that. I know that you are really trying to do the right thing and it's easy to criticize those things. I've done some of that and now I'm thinking, well, I don't know; I've got to think it through, but the amount of work you've done is clear. I like the approach. I like the presumption. I like the way you presented it; and so I think you've done a really nice job. I'm looking forward to reading some of them; I'll go on the web page and look at them, which I haven't done.

Female: Although I don't know that I will personally be able to read through 1,500 of these, if I as a commissioner have to, if we have to approve these, wow! There's a lot to each one let alone 1,500. I mean you guys know more than I do, I mean you're doing it.

Henry Marquard: Don't we have to only approve the ones where the Use Attainability Analysis changes, right?

Adam Schnieders: Yes, wherever there's a change.

Henry Marquard: Is that where the 1,500 number comes in or is that just the ones you've done?

Chuck Corell: No, we're estimating that there should be about 1,500 to do. We're also estimating that most of those 1,500 we are going to recommend that you probably change the VWW1 to VWW2 because remember our priority, the reason we are doing these is that all these streams went from general use to VWW1. They are very small streams, so the vast majority really don't fit the definition of VWW1s. They fit the definition of VWW2. So we are anticipating that most of these 1,500 are going to come to you with the request: we think it should be VWW2 instead of VWW1.

Mary Gail Scott: But it will still be A1.

Chuck Corell: That's another, what I anticipate is that again most of these we are going to recommend that they go to A2 from A1 because of the size of the stream.

Mary Gail Scott: If they are A at all?

Chuck Corell: Very few of these we are going to recommend no A at all. We saw one at Elgin where we may have to come back and say we don't recommend any classing. There may be a handful of those. I'd be surprised if we saw a dozen like that.

Mary Gail Scott: I think I kind of drove having this as a standing agenda item and I'm not sure yet that that is the wrong thing to do. One of the things that I was really wanting to drive was understanding better the process and the application of these things and I think that Adam's presentation today was really good and now I want to take the chance to look at what's going on. Will these go through public comment?

Chuck Corell: Yes, in two different ways. UAA state law says that we have to notify the effective discharger of the change and the effective discharger or an adjacent land owner has the right to request a meeting with the director. That's one form of public comment there. We also are posting these on the web for the world to see until we get their comments. We also pass out post cards at the site when we don't have someone to talk to or even if we do have someone to talk to we pass out postcards: please tell us what you see is going on in this stream. There is a place on the website where regardless of whether you do a UAA or not you can tell us what kind of recreation uses are going on in the stream. Then of course when we go through rule making it has the formal public comment period.

Mary Gail Scott: So that will be a piece of the process.

Chuck Corell: Yes.

Henry Marquard: I have a legal question. I was wondering about is there a way that the commission could designate let's say several subcommittees and each subcommittee could look at a group of these and then make the final recommendation to the commission so not all eight or nine commissioners are looking all 1,500 but there are eight commissioners now so let's say we have two subcommittees and each subcommittee would look at 700 of them or whatever we decide to do and then the full commission would make the decision but it would be legislative committee getting a report from the subcommittee or

Darrell Hanson: The commission could definitely create committees to make recommendations. The committees would have to be fewer than five in number unless you wanted to be subjected to the open meetings and open records law and there would be some question, I can't remember now if the committee is only power to recommend, has no final action, I think even fewer than five would be exempt from the meetings and open records but I could be wrong about that.

Chuck Corell: It seems to me what you just described is DNR staff. You approved our protocol, we've given you our protocol,

Darrell Hanson: He was just asking if we could create a committee

Chuck Corell: Just the point I wanted to throw out here is that you already have a staff that has looked at all these and have made a recommendation to the full commission. If you want to split out and look at them again and come back with other recommendations

Henry Marquard: What I am suggesting is this: I've talked to I think the Sierra Club, a couple of environmental groups. They are basically going to object to every UAA that changes from the optimum protection. That means we are going to have to have a hearing of some type for each of these, whether it's going to be public comment to the commission. What I was suggesting instead of having whatever large number of these come up to be, because if that's the case then the commission is going to have to start reading for like three-day meetings, we will be meeting for like three day meetings for a period of time when two days of the commission meetings will simply be rule making on each of these, 'cause each of these I think are going to be, a large number of these are going to be contested and the commission is going to have to take action, and so what I am suggesting, what I'm curious about is that vehicle, let's say we divided the commission into two committees and took all of these and divided them up in half and each committee heard half of them. I mean that would be where the public comment period and the objections and stuff would be and that would be where the public hearing in front of the PC, you could come and address the full commission but my guess is that the commission will probably decide that as a matter of course that the recommendations of the subcommittees would be heard.

Darrell Hanson: I would say if you follow a process like that, not saying whether or not it's a good or bad process, but if the groups who objected could still make their case to the full commission, I don't think it would save any time, except in those cases where the committee ended up agreeing with the group that was propose.

Henry Marquard: I didn't say maybe there is a way I guess and that would be the other question that the commission delegates to these committees; that's where the public comment will be and the committees

Darrell Hanson: My guess is we could do that if we chose to do it that way. If that's what we wanted to do my guess is, I don't know if it's for a fact, but my guess is we don't even have to take public comment during our meetings unless we choose to do that.

Chuck Corell: Once for notice and once for final rule and for public comment period we're inviting/requesting the comments and we'll gather all the comments summarizing and making a recommendation based on those comments for the final approval.

Darrell Hanson: We might want to wait on this discussion anyway just to see how much objection we do have.

Dave Petty: On a monthly bases how many are you going to bring?

Chuck Corell: How many do you want? That's really where we are. We have 300 ready for right now.

Dave Petty: We have how long to get them finished?

Chuck Corell: We have 300 ready to come next month.

Charlotte Hubbell: This is unwieldy. Now you can't expect, I mean, NO! No, this is just not going to happen. I'm not sure I know what the alternative is. What are we charged with doing. What do we

have to do? Can't we just approve the process by which this is done and that's that and leave it to the department to do their business?

Rich Leopold: The big part, the big question mark is how many are going to be contested because if none are contested, or if let's say if you have 300 of them and environmental groups you know what to talk about 10 of them that's doable.

Charlotte Hubbell: Okay, that's doable.

Rich Leopold: But to get that to happen then you need to have the environmental groups more accepting and acknowledging the process. They feel real perceived that they don't know what's going on with some of this stuff right now and they're worried that they are going to have to contest all 300.

Dave Petty: Why don't we just wait and see what happens, but if there are that many the first time, you can start the meeting the day ahead of time as information for all the environmentalist and just let them, by that time they will know whether they want to protest or not. We might be able to pass 300 at once and be done with it.

Henry Marquard: One way I guess to do it and I think Dave may have a good starting point is if we did a, the answer to your question Charlotte we have to do each one, everyone where we change we have to do

Charlotte Hubbell: Every one that's degraded, not one that's upgraded.

Henry Marquard: Well, there's no upgrading.

Female: The ones that are upheld.

Henry Marquard: There already up at the top right now. So every one that's degraded. Now the 300 you're talking about are those 300 degraded.

Chuck Corell: The vast majority of them, yes. Downgraded.

Henry Marquard: The ones where there is no downgrading we really don't need to be concerned about. Those won't come to us. So the ones where there's a downgrade will come to us. What I suggest we do is en masse like the 300, we do a notice of intended ruling to adopt whatever, unless there are some objections within the commission to any given one of those that we just en masse do a notice of intended action. Then we see what the public comments are like Rich was say, if ten of them come in okay here is the public comment on ten of them. Then we take those ten of them and say okay we are going to move that to a different process. We are going to have to deal with the fact that there are objections. But the other 290 we can do again as a block rule making on those so basically what I propose is we start out with a block notice of intended action; some manageable number: 200, 300, 100, whatever, 'cause you could really phony up the process by saying we'll do all 1,500 at once knowing that there is no environmental business or group out there that is actually _____ it's the old if you want to hide documents in a lawsuit you give somebody _____ documents.

Male: Hold on. 100 or 200 or 300. In this one mass notice and then we just agree that if there are objections or comments, the ones that have those are pulled out

Darrell Hanson: I think that sounds pretty reasonable. And we'll let the public comment tell us. I think that sounds reasonable.

Henry Marquard: If there's objection to all 300 then we have to figure out some mechanism

Charlotte Hubbell: I guess I just don't understand why we are micromanaging this. I

Rich Leopold: It's because of the legislature.

Henry Marquard: The law requires us to do a rule making for every

Darrell Hanson: Which wasn't an issue until now because it didn't used to be a case by case reassessment. It was a very manageable process. I have been on the commission six/eight years and I don't know how many classifications we had in that period: two, three?

But now when we started this process of totally revamping our classification system so; we are in uncharted territory here. I do like the idea of waiting to see what kind of response we get rather than designing a system anticipating a response we might not get. I like that mode because we can always pull some off and pass everything else and

Henry Marquard: There are some like the utilities board and things like that that you wind up kind of with a contested case calendar.

Darrell Hanson: Do we have anything else to deal with on this one?

Chuck Corell: So what's the number?

Darrell Hanson: How many do you have ready for us?

Chuck Corell: 300 are done. Now whether we get those organized and to you by the time the next agenda items are ready I think remains a question.

Charlotte Hubbell: Can't we do this on a paperless basis. Can't we just go on the website and do it that way?

Chuck Corell: What I want to do is give you a list of all 300 listed by the creek name and then what changes: A1, A2, VWV1, V2. Very simple. For each one of these, then you can go to the website, find that UAA and look at all the details you want.

Charlotte Hubbell: Right.

Female: But only send us the ones that are being downgraded.

Darrell Hanson: That's what it will be.

Female: You have 300 that have been downgraded already.

Chuck Corell: We're recommending for downgrading.

Female: See it's really your fault if this becomes unmanageable.

Female: We said they were all to be fishable, swimable.

Darrell Hanson: I don't think we need to do a lot of investigation ahead of time unless somebody chooses to because the public comment period is going to identify the ones that we want to investigate probably.

Chuck Corell: We'll bet a big bunch, no more than 300, ready as soon as we can. We'll send you a summarized list and then you can look on the website to find all the details you want. Do we want to do information first and then public notice.

Henry Marquard: Let's do a notice of intended action and I think we should leave it to you guys, if you have 100 of them and you are ready to go, if you have 150, whatever number gives Wayne the absolute worst problem and fits and sleepless nights, pick that number.

Rich Leopold: I don't know the right way to do this. Hind sight is going to be 20/20. But I'm thinking about the action/reaction of different stakeholder groups. I wonder if we should have a hundred lists. Release the 100 list and then have meetings with different stakeholder groups because what I am thinking here is that, let's say, and by the way the environmental community is not united, there are separate groups. You have CCI, Iowa Environmental Council, and they have different characteristics. Now let's say you come out, and the first time you come out with anything, and you say you are downgrading 300 streams and that might be enough for Sierra Club to say to hell with it, I'm not even looking at it, LAWSUIT! I don't want to get in a position where we have to talk with them first where we need to compromise what we want to do but just bringing them into the process.

Darrell Hanson: Somebody asked us for a number, we gave them a number, but if you have a better number we like your number. At least I do.

Rich Leopold: Talking with ag industry groups and environmental groups separately, IWPCA, I don't know.

Chuck Corell: We can get our list, I'm not sure it's all that important but for the 300, no more than that. We can get our list together, prepare that and then send it out to environmental groups and let them know that we have public participation here that we plan to take to the commission before we take it to the commission.

Henry Marquard: I am not sure I understand the why of doing that.

Rich Leopold: Just because I don't want a systematic fight. I would rather have a site fight. Like a number. I'm not even going to look at any site, you're whole system's screwed and we're going to do a lawsuit. I would rather have, I don't like what you said on this stream because of whatever evidence they have vs. whatever evidence we have. I think

Mary Gail Scott: Especially if they've made comments that they feel like they are outside the process. Honestly until today I was not comfortable with the process and the protocol and the application of the process. I am much more comfortable with what I heard today. Let's take the hits on the process. Let's answer the questions on the process, and then we're down to the sites specifics: did you really apply it properly here. That's a different argument than your process

Darrell Hanson: You know the original question was: How do we want to deal with it? We don't to deal with starting from zero arguing all the different streams, I think if I read everybody correctly.

Darrell Hanson: Now, how DNR staff deals with it is a different issue, and I would say pick whatever number you think is manageable, you decide. It's always, at least in the first round or two, it will probably make sense to do a lot of preconsulting, you know, I can see your point. Hopefully after the first round or two the preconsulting may become less necessary and the size of the list we handle each time might become bigger.

Henry Marquard: Is the preconsulting for the size of the list, is that what you're really talking about?

Rich Leopold: The magnitude of the system. You know we're going from 3% of our streams to 36% of our streams classified under recreational uses. The magnitude of the changes is huge and I don't want to be caught into a spot where we're arguing over the whole system change. I like what's happened and it's not, nothing has happened thus far that has made me uncomfortable except for now we have to not only be transparent, it's almost like we have to do a little bit of marketing. Like we did the right thing. Let me show you why we think that.

Henry Marquard: Just so I'm clear. When the fights on these come up, we have to do the UAAs. My understanding is the other way something like this can come to us is when somebody is renewing their permit and they say: "No, you have this classified wrong," and they can object.

Rich Leopold: Under a national perspective that's the way it should be. Our state legislature decided we had to do UAAs on everything.

Henry Marquard: Right. They were fired because normally it is if somebody objects and then you do it. The placing the burden on the agency to do this first, I mean I'd say it's an irrational concept.

Henry Marquard: Yeah, unless you we can run quickly to the next legislature and tell them to appeal that! So then we basically, I'm not sure if like a stakeholder's meeting or something, but you're going to get some kind of input about how many reactionary should we release or how do you, what way. The law requires us to basically in some point in time we have to release these through rule making so it's really almost a question of how many should we release.

Darrell Hanson: I think we've already dealt with that. They (DNR) are going to pick a number that they are comfortable with the first time and that's what we'll deal with the first time.

Mary Gail Scott: It's a regulatory negotiation. A prenegotiation regulation to decrease the number of second guesses after the fact and in this case what we are really negotiating I think is the adequacy of the process. And then the application of the process, once we get that ironed out, the application of the process becomes the primary issue and that's a site-by-site issue. They both come up in these initial meetings, but hopefully by the end of the meeting everybody gains an understanding and consensus on the process and then that is no longer an issues and it becomes the site-by-site stuff we end up arguing over. I think it's a good idea.

Darrell Hanson: Yeah. So unless there are any objections that's how we'll do it.

Mary Gail Scott: I think also that speaking from if I were a potentially affected party I wouldn't want to be impacted by two or three Use Attainability Analyses and have them published at separate times because then you're fighting on three different fronts. If we can look at affected facilities where there are complete Use Attainability Analysis done those could be a nice priority and that should be something we should continue all along as long as we know where the affected streams are and what are done.

Henry Marquard: So, Mary Gail, you are basically saying and as I think about it, it's a good idea, instead of picking out 300, or 100 at random, you basically say okay we are going to do all the ones on Brushy Creek because those are going to be the ones

Darrell Hanson: If they have all their different analysis

Mary Gail Scott: Or the one court, or you just choose facility by facility where they've got complete Use Attainability Analyses for all the stretches of whatever stream or streams they impact.

Dave Petty: Why don't we leave that up to the guys in the field. Let's wait till they bring it back to us and we'll deal with what we're supposed to do with it. We can start with one. Until we can figure out one, there's no need to do any more and if Rich thinks we can handle 100 let them do 100, and if it's 25 who cares. Pick a number and forget about it.

Mary Gail Scott: And legally or administratively for the DNR is it probmatical to do this in chunks instead of all at once.

Dave Petty: Let them decide.

Rich Leopold: No. Yeah. What might be a good idea and I don't know we can decide this but maybe just do 10. Maybe just start with a few samples across the board and that would really test the waters and get comment.

Adam Schnieders: Some of the UAAs specific to stream so if we do the Cedar River and we have dischargers going directly to it we could go ahead and issue a permit for it but there is still four indirect dischargers that need to be considered. Remember the UAAs are specific to stream not the facility so we have coverage. We don't want to get the whole watershed before we go forward with the UAA.

Mary Gail Scott: As long as each individual facility's impacted streams are included in the package that goes forward because if I'm a discharger and I impact two streams and you only have one of them or three stream segments and you only have two of them done, I don't really want to have to look at two packages if I don't have to.

Adam Schnieders: I understand. We've tried to implement that but we realize that for us to get these things out it's almost impossible to post larger rivers for recreational uses. The Skunk River and Nishnabotna River, 200 miles long, you are going to have a lot of indirect dischargers to different tributaries, we may not have gotten the work done. To get the Nishna, we want to get that in either way.

Mary Gail Scott: Indirect dischargers are harder to notice anyway, right?

Adam Schnieders: That is what I'm saying. . . . I feel it's appropriate to get these done as soon as possible regardless of whether it's A1 or A2 or WW1, 2, or 3. We need to get these permits going to

keep the NPDES permit backlog from persisting. The longer we delay, the longer we wait to get these things on the books, the longer it will be before we see water quality improvements; keep in mind we went ahead and designated BWW stream A2 in the past. The affected on hundreds of facilities that were going to install disinfection. This got sidetracked due to administrative snags from the EPA so for three years there was all the vital rules put to the side and thus no improvements required as originally expected from the rule making efforts.

Mary Gail Scott: You can't issue a NPDES discharge on an incomplete stream characterization anyway so we're on the same page.

Darrell Hanson: I'll talk to you later because I'm afraid since we've already agreed that you guys will decide how many, I'm afraid if we reopen that issue we're going to start again speculating on how many you ought to decide on.

Darrell Hanson: We've talk about, if I understand, I'm going to try to bring this to a close, because we have reached the point where everything's been said but it all hasn't been said by everybody so before we get to that point. As I understand it we are going to ask the Department to decide how many they want to use first go-round for downgrades. They will decide to what extent they want to meet with stakeholders in advance to discuss the process. At that point when they are comfortable if they've done that, they'll bring those to us, we'll put them out for comment, and we will see what kind of comments we get before we decide how much effort, and what type of effort we'll put into those that have objections. Then the Department and we will discuss at that point whether we want to see larger lists or not because until we know how the first one goes its really a waste of time to talk about how many we want to see six months from now.

Chuck Corell: It also depends on how fast we can get these written up and ready to bring to you.

Darrell Hanson: And so we will await your report.

INFORMATION

GENERAL DISCUSSION

Wayne Gieselman: I will point out our next regularly scheduled meeting is July 3, is that still suitable?

<i>Motion was made by David Petty to change the July 3rd meeting date to July 2nd. Seconded by Sue Morrow. Motion carried unanimously.</i>
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Wayne Gieselman: One more rule-making coming to you next month will also be coming emergency double barrel. It's at least potentially kind of _____ rule. EPA has raised the emission limits for ethanol plants for 100 tons up to 250 tons per year which keeps at the 250 ton limit keeps them below psd threshold. Why did they do that? Because other corn-related processes that milled corn and for food production are subject to 250 ton psd limit.

Darrell Hanson: The different limit was because of the final product, not because of the process that they were using. Right?

Wayne Gieselman: Classified as chemical manufacturing process as opposed to food manufacturing. We can go through the reasons. The point being we have a state law that says we can be more strict than what EPA is.

Dave Petty: The ones that are already up and running, do they have to stay with the 100 then for the time being?

Wayne Gieselman: They were designed to stay under 100 tons so I honestly can't answer that right off the bat. This would certainly apply to ethanol plants that are currently under review or being proposed. The ones that are up and running should have the right equipment to stay under 100 tons and I think the best thing I can do is tell you we'll explain that in more detail next month.

Dave Petty: Seems like a couple of them couldn't get under 100 but certainly would be

Wayne Gieselman: Well, yeah, we had some operate even 250 as we go.

Darrell Hanson: Interestingly as I understand it, from what I've read, the existing air standard is usually attainable by plants that are making 100 million gallons or less a year. An interesting coincidence, most of the plants . . . the threshold of what that might do to the 100 million gallon plants that have already been built. If they start competing against the 250 million gallon plants.

Wayne Gieselman: . . . whether it's coal or natural gas.

Charlotte Hubbell: Why is it that it takes 13 years to get in compliance with EPA rules on solid waste disposal, but six months to feel that we have to jump, I understand what the Iowa law says that we can be no stricter. Why don't we take on EPA and say?

Wayne Gieselman: We'd have to take on the Iowa Legislature in this case, not EPA.

Charlotte Hubbell: Okay, let's do that too. I mean, you know, really it's just like we have to jump and say okay we can allow we can allow more pollution because EPA has suddenly raised the bar. I mean doesn't that strike you?

Darrell Hanson: I agree.

Mary Gail Scott: That's not federal. Federal law does allow the states to be more stringent. That's a state law.

Charlotte Hubbell: I just wanted to maybe put this on the agenda for next month to talk about this situation with ethanol plants, bio fuel plants, and how there can be 400 environmental violations in the last year, I think Perry Beaman wrote. This was the segment that was in the Sunday Register. There have been fish kills as a result of this. 11 bio fuel plants have been cited, I don't know how many times. Maybe that's the 400 times, for sewage violations, concentrations of chloride, other suspended solids (mainly salts) coming from ethanol plants among the highest of any industry in the state. I mean what are we doing about this.

Wayne Gieselman: Most of that update came from us, but not all of it. Certainly the violations came from us. We have a lot of issues to deal with when ethanol was first starting up.

Darrell Hanson: I was going to ask about what the time frame was on those violations.

Wayne Gieselman: My point being when ethanol was first started we had some plants with multiple violations to extent _____ by the number of consultants who were contending there would be no discharge from these plants, or emission. Shortly after this became so apparent we were having floodplain violations, public water supply violations, and no wastewater discharge permits and they were building. We did call a summit or a come-to-Jesus meeting, however you want to put it, with at that point the 15 ethanol plants that were in operation or under construction. Chuck Corell was actually a supervisor in our air quality then and we spent a full afternoon with all of those folks explaining to them the permissive processes, the wastewater processes, air quality processes, and the fact this is good industry. It's not a farm operation and that's kind of what we were dealing with at that point, that kind of intelligence. We worked diligently with them and for the most part they have been working diligently with us since that time. It's not to say we don't have problems. We've taken some enforcement actions on a lot of these things.

Charlotte Hubbell: Do you feel like we are in control of what's going on? Do you feel like we're on a runaway train? Is there something more we need to be doing.

Wayne Gieselman: I felt like we were on a runaway train in 2003. I don't feel that way anymore. I think we are in a lot better position than we were at one time. One of the issues MidAmerican certainly raised, is that ethanol for our air quality bureau is their top priority. Other industries kind of sit a little bit in the background.

Darrell Hanson: I know in our area talking to the supervisor of our region, DNR, his experience is pretty much the same. I asked him to get some feed, we have a plant that is proposed, actually two plants that proposed for our county, so I asked our office to get our DNR office to get some basic information on what kind of violations they're seeing around state and the answer I got was again in the early days was pretty bad. There were problems for the exact reason that Wayne said. We had a group in our county that was trying to build a farmer-owned ethanol plant. They didn't get, they didn't get taken for a ride on the plant design, they got taken for a ride for the money and they lost all their money and they lost all their money 'cause somebody walked away with it and took it to Germany or something. But, there were people building plants as consultants who didn't know what the Iowa regulations were. I know of at least one case there was a plant that was practically, it was well under construction, before DNR even knew it was under construction. A field officer was driving down the road and saw this construction and wondered what was going on. Then when the stakeholders group got together, that was an effort to get a handle on it, what I was told was that the plants that were built in those early days continue to see problems because they were built wrong in some cases. But the ones that have been built since the Department got it on the radar scope, do not really see it, you can correct me if I'm wrong, do not really see it as a problem. In fact was some of their better industrial sectors as far as not having problems to deal with. But there is that dividing line between those built in the early days of the boom and those that have been built since DNR has had some control over the situation.

David Petty: I believe I made more so than that. As an example, and it kind of goes back to what happened to me. Everything in here is stretched about as far as it can be stretched. As an example from early to late, it says in here four gallons of water to one gallon of ethanol. There was a time that may be the worst one ever. Most of them today are running like 2.8. That's only 25 to 30% of stake or hold quote. That the difference between 15 million gallons a day or 21 or 22 million gallons a day. So you put everything in perspective and it's like 15's not so bad but it's a whole lot different than 22.

Practically everything in here that Perry writes will be stretched that way. Probably sometime, it's really hard to find an article that has to do with agriculture he writes that he doesn't do that to.

Darrell Hanson: Like we had one ethanol plant that came to us with a complaint that they found out that if they pump water out of the ground and then discharged it they'd be in violations of state standards. All they did was pump it and discharge it, the tbs was already so high it would be in violation of state standards.

David Petty: So much of this you can make out of this what you want, but it's a huge issue and it's moving forward really fast. Efficiency is the name of the game and they're really screwing things down in every possible way.

Henry Marquard: And you have new technologies too that are changing. The technology is moving ahead so fast. It's only the emissions that keep the 100 million gallons. I think with that you're going to see 300 million gallon plants; because it's a whole different ballgame too. It's not the farmer's coop or things like that any more. It is primarily the people we're dealing with are the European German and Dutch companies because they've had Germans using ethanol as a major fuel since 1941 so were seeing those. The technology is rapidly changing. There are, however, some problems with one of them. We saw Bill Trent here this morning and Bill's talked to me. It is hard for GPC to get an air permit because your air quality bureau is fixated as he would say on ethanol plants.

Wayne Gieselman: It isn't fixated on it but it is definitely a state priority.

Henry Marquard: Is that logical. Is it better to have that as a state priority than a company that may be entrenched and employs 20,000 people.

Darrell Hanson: Who said it was. If you find a bear in your kitchen don't debate whether it's logical. You just have to deal with the situation.

Charlotte Hubbell: What are we doing to think ahead? What are we doing to plan for this eventuality that there are going to be lots of ethanol plants maybe 300 million gallon plants in Iowa? What kind of legislation do we need to regulate them or to make sure that there is a water assessment analysis done?

Darrell Hanson: I will say this, the Department at least in Dyersville did discover from my understanding that their water withdrawal plans were going to cause a disadvantage for the neighbors and did require them to come up with a different plan.

Wayne Gieselman: We do a lot that doesn't get brought to the attention of this body.

Charlotte Hubbell: So what would happen if there were a lawsuit against EPA challenging their authority to be able to raise the limit of air emissions to 250. Then would we have to be in compliance while that rule was being challenged?

Wayne Gieselman: Let me make sure my statement is correct but I'm guessing that if they have a rule that is in place, while it's being challenged it will still be in place.

Darrell Hanson: As I understand the reason for the change; if you have two identical plants making an identical product, that the end result is that the ethanol plant has to put a little bit of something in that

makes it undrinkable. Otherwise you can have two identical things going on and the one that is producing the alcohol as a food item had the air limit of 200. The one that was producing it to use as fuel had a limit of 100. The argument was same process, same product, why do they have two different standards. What difference does it make what you use the alcohol for at the end of the process. The issue is what are you emitting during the process? They chose to resolve the difference by letting the fuel alcohol production have the same limits as the food alcohol production. I presume they could have gone the other way too. That's what they chose to resolve it. It would be hard to argue that the new standard is wrong if it was right for food alcohol, but it would also be hard to argue the other way. Either way it was resolved it would have been hard to argue with.

Charlotte Hubbell: So you'll keep us informed of what goes on in these discussions.

Wayne Gieselman: Yes

MONTHLY REPORTS

Wayne Gieselman, Division Administrator, Environmental Protection Division, presented the following items.

The following monthly reports are enclosed with the agenda for the Commission's information.

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Manure Releases Report
5. Enforcement Status Report
6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

Name, Location and Region Number	Program	Alleged Violation	DNR Action	New or Updated Status	Date
Aldag, Travis Ida Co. (3)	Animal Feeding Operation	Failure to Submit Plan	Order/Penalty	Referred Petition Filed Answer Filed	7/18/05 11/29/05 12/01/05
Bridges Bay Resort, LLC Spirit Lake (3) UPDATED	Air Quality Solid Waste	Open Burning; Illegal Disposal	Order/Penalty	Referred Petition Filed	9/19/06 4/18/07
Bulk Petroleum Corporation 28 Sites (1) (6)	Underground Tank	Operation and Maintenance Violations	Referred to Attorney General	Referred Petition Filed	6/19/06 2/01/07
Cargill, Inc.; Mort's, Inc. Iowa Falls (2)	Solid Waste Wastewater	Illegal Disposal; Prohibited Discharge	Referred to Attorney General	Referred	11/14/06

Clinton, City of (6)	Wastewater	Compliance Schedule; Discharge Limits	Referred to Attorney General	Referred	9/19/05
Cohrs, Bernard; Cohrs Construction Dickinson Co. (3)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred	11/14/06
Country Stores of Carroll, Ltd.; LeMars Country Store, LeMars (3)	Underground Tanks	Leak Detection; Record Keeping	Referred to Attorney General	Referred	3/06/07
Des Moines, City of; Metropolitan WW Reclamation Authority (5)	Wastewater	Compliance Schedule	Referred to Attorney General	Referred	8/15/06
De Vos, Harold and Sharon Rock Rapids (3)	Air Quality Solid Waste Wastewater	Open Burning; Illegal Disposal; Operation Without Permit	Order	Referred Petition Filed	9/19/06 1/23/07
Environmental Recycling Co., Inc. Dwight Oglesbee Masena (4)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred	12/05/06
Feinberg Metals Recycling Corp., Ft. Madison (6)	Solid Waste Wastewater	Operation Without Permit; Illegal Disposal; Stormwater – Operation Without Permit	Referred to Attorney General	Referred	3/06/07
Garrett Corporation; Delta Industries Waterloo (2)	Air Quality	Construction Without Permit; Construction Contrary to Permit	Referred to Attorney General	Referred	1/02/07
General Motor Corporation Sioux City (3)	Hazardous Condition	Remedial Action	Order	Referred	9/19/06
Golden Oval Eggs LLC Thompson (2)	Wastewater	Prohibited Discharge	Referred to Attorney General	Referred Petition Filed	12/05/06 3/29/07
Heisdorffer, Leland Keokuk Co. (6) UPDATED	Air Quality Solid Waste	DNR Defendant	Defense	Petition Filed (No original notice served) IDNR's Motion to Dismiss/Strike Hearing Date Ruling on Motion (Dismissed all damage claims against the State) Trial Date	10/06/05 8/07/06 9/01/06 9/11/06 5/11/07
Kruse Dairy Farm, Inc. Dyersville (1)	Animal Feeding Operation	Failure to Submit Plan	Order/Penalty	Referred	12/19/05

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Landfill of Des Moines #4 Des Moines (5)	Solid Waste	Operation Permit Violations – Other	Referred to Attorney General	Referred Petition Filed	4/17/06 1/23/07
Leigh, Marsha Glenwood (4)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Order/Penalty	Referred Petition Filed Defendant's Motion to Dismiss State's Resistance/Motion to Dismiss Motion to Intervene Hearing on Motion to Dismiss Ruling Denying Motion to Dismiss Resistance to Motion to Intervene Hearing on Motion to Intervene Ruling Denying Motion to Intervene Hearing on Defense Motions Motion for Judgment on Default Order Granting Default Judgment (\$100,000/Civil; \$10,000/Admin. & Injunction)	9/20/04 3/29/05 4/20/05 5/02/05 5/12/05 5/23/05 5/23/05 5/23/05 6/27/05 6/29/05 12/05/05 9/12/05 12/7/05
Miller, Albert Kalona (6)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred Petition Filed	9/19/06 1/23/07
Miller Products Company Osceola (5)	Wastewater	Prohibited Discharge	Referred to Attorney General	Referred	12/05/06
Miller, Robert Batavia (6)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred Petition Filed	8/15/06 1/23/07
Mobile World LC Camanche (6) UPDATED	Air Quality Solid Waste	Open Burning; Illegal Disposal	Order/Penalty	Referred Petition Filed Bankruptcy Petition Filed Plan for Reorganization Appearance by State in Bankruptcy Notice of Intent to Seek Default Appearance by Defendant Trial Date Consent Decree (Injunctive Relief)	8/16/04 4/08/05 4/13/05 4/13/05 6/17/05 3/03/06 3/08/06 11/19/06 3/27/07
Moellers, Kenneth Cresco (1)	Animal Feeding Operation	Prohibited Discharge – Open Feedlot; Failure to Report a Release; WQ Violations – General Criteria	Referred to AG	Referred Petition Filed	2/20/06 12/11/06
Organic Technologies; Tim Danley;	Solid Waste	Permit Violations	Referred to	Referred	12/15/97

Ken Renfrow; Mike Danley
Warren Co. (5)

Attorney
General

Petition Filed 10/02/98
Application for Temporary Injunction 2/04/99
Temporary Injunction 4/19/99
Trial Date 9/13/00
Partial Judgment (Clean-up Order) 9/28/00
Contempt Application 12/12/02
Contempt Hearing Date 2/20/03
Contempt Finding and Civil Penalty 2/20/03
(\$100,000 and 30 Days in Jail – 7/09/03
Suspended until 7/8/03) 8/01/03
Hearing Regarding Contempt 8/20/03
Order Regarding Contempt 9/18/03
Bond/Cleanup 4/16/04
Deadline 12/10/04
Bond Posted 1/05/05
State Objections to Bond Ruling Denying 8/15/06
Objections to Bond Status Hearing Date
Hearing on Motion to Extend Cleanup
Deadline
Order Reinstating \$100,000 Civil Penalty
Site Clean-up Completed

Pedersen, Dean
Laurens (3)

Animal
Feeding
Operation

Failure to Update Plan

Referred to
Attorney
General

Referred 4/17/06
Petition Filed 12/11/06

Pellett Chemical Co., Inc.
Wiota (4) **UPDATED**

Underground
Tank

Failure to Submit Tier 2
Site Assessment

Referred to
Attorney
General

Referred 6/19/06
Petition Filed 3/29/07
Defendant's Motion to Dismiss 4/24/07
Resistance to Motion to Dismiss 4/27/07
Hearing on Motion to Dismiss 5/14/07

Plymouth Dairy Farms
Plymouth Co. (3)

Animal
Feeding
Operation

Prohibited Discharge –
Confinement; Record
Keeping; Application in
Excess of Crop Usage
Rate; Freeboard

Referred to
Attorney
General

Referred 9/19/05
Petition Filed 1/10/06

River Bluff Resort, LLC; C.J.
Moyna &
Sons, Inc.; P.A. McGuire
Construction
McGregor (1)

Wastewater

Stormwater – Pollution
Prevention Plan
Violations; Water
Quality Violations –
General Criteria

Referred to
Attorney
General

Referred 4/03/07

Roquette America
Keokuk (6)

Air Quality

DNR Defendant

Defense

Petition Filed 8/28/03
DNR's Answer 9/11/03
DNR's Resistance to
Temporary Injunction 9/11/03
Hearing on Temporary
Injunction 9/29/03
9/30/03

DNR's Brief in Resistance	1/14/04
Roquette's Brief	1/06/05
Ruling on Temporary Injunction	10/24/05
Trial Scheduling	6/29/05
Conference	6/29/05
Trial Date	4/24/06
Motion for Continuance	4/24-28/06
Order Granting Continuance	5/25/06
Trial Date	6/020/06
Trial	6/19/06
Roquette's Request to Reopen	6/21/06
Evidence	7/05/06
IDNR Resistance to Reopening Evidence	4/09/07
Roquette's Reply to Resistance	
IDNR Motion/Supp. Resistance	
Order Denying Roquette's Request to Reopen Evidence	
Partial Consent Order	

Roquette America, Inc. Keokuk (6)	Air Quality	Construction Without Permit	Referred to Attorney General	Referred	9/19/06
Rose Bowl, The Mason City (2)	Drinking Water	Monitoring/Reporting – Bacteria, Nitrate; Public Notice	Referred to Attorney General	Referred Petition Filed	7/17/06 1/22/07
Schoenberr, R. B. d/b/a Long Branch Tavern Monmouth (1)	Drinking Water	Permit Renewal	Orders/Penalties	Referred Court Order Re-Referred Petition Filed Application for Contempt Contempt Hearing Order for Contempt (\$3,000 fine) Arrest Warrant Issued Contempt/Temporary Injunction Hearing Temporary Injunction Granted Contempt Hearing Date Contempt Hearing Order Finding Defendant in Contempt \$3,000 Fine Amended Petition	6/20/97 12/09/98 11/21/02 3/11/05 4/01/05 8/05/05 4/01/05 5/03/05 5/03/05 7/06/05 8/05/05 8/05/05 1/31/06
Sharkey, Dennis Dubuque Co. (1)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Referred to Attorney General	Referred	4/03/07
Simpson, Barry Worth Co.	Animal Feeding Operation	DNR Defendant	Defense	Petition Filed Answer Filed	10/18/04 11/04/04

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SNF, Inc. dba Brand FX Body Company Pocahontas (3)	Air Quality	Operational Violations	Referred to Attorney General	Referred	9/19/06
Stone v. Rembrand Enterprises, Inc.	Animal Feeding Operation	DNR Defendant	Defense	Petition Filed State Motion to Dismiss Hearing Ruling Dismissing Damage Claims State's Motion for Summary Judgment Order Granting Continuance Hearing on Summary Judgment State's Supp. Reply to Plaintiff's Resistance to Motion for Summary Judgment Ruling Denying Motion for Summary Judgment Application for Interlocutory Appeal Memorandum in Support of Interlocutory Appeal Application Denied Motion for Separate Trial Hearing on Motion for Separate Trial Order Granting Separate Trial Trial Brief Reply Brief Trial Date	12/06/04 1/10/05 3/07/05 5/17/05 2/27/06 3/20/06 5/01/06 6/19/06 10/04/06 11/03/06 11/03/06 1/08/07 1/22/07 3/05/07 3/14/07 4/06/07 4/13/07 4/16/07
Sweitzer, Chad and Lona; Winter Mobile Home Park New Hampton (1) UPDATED	Drinking Water	Operation Without Permit; Monitoring/Reporting – Bacteria; MCL – Bacteria	Referred to Attorney General	Referred Petition Filed	11/14/06 5/03/07
U.S. Nation Mart, Inc.; Ved Pal; Babli Saini Davenport (6) NEW	Underground Tank	Leak Detection; UST System Deficiencies	Referred to Attorney General	Referred	5/01/07
Yentes, Clifford Council Bluffs (4)	Solid Waste	Illegal Disposal	Referred to Attorney General	Referred	4/03/07

Environmental Services Division
Report of Manure Releases

During the period April 1, 2007, through April 30, 2007, 4 reports of manure releases were forwarded to the central office. A general summary and count by field office is presented below.

Month	Total Incidents	Feedlot	Confinement	Land Application	Transport	Hog	Cattle	Fowl	Other	Surface Water Impacts
October	12 (13)	0 (1)	9 (2)	0 (1)	3 (9)	9 (12)	0 (1)	3 (0)	0 (0)	1 (1)
November	10 (8)	0 (0)	2 (1)	3 (3)	5 (4)	8 (6)	1 (2)	1 (0)	0 (0)	1 (1)

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December	5 (2)	0 (0)	5 (1)	0 (0)	0 (1)	4 (0)	1 (2)	0 (0)	0 (0)	1 (0)
January	4 (3)	0 (0)	3 (2)	1 (1)	0 (0)	4 (1)	0 (2)	0 (0)	0 (0)	0 (0)
February	4 (2)	0 (0)	2 (1)	0 (0)	2 (1)	3 (1)	1 (1)	0 (0)	0 (0)	1 (0)
March	7 (2)	0 (1)	6 (1)	0 (0)	0 (0)	6 (0)	0 (2)	0 (0)	0 (0)	2 (2)
April	4 (6)	2 (0)	2 (2)	0 (2)	0 (2)	2 (6)	2 (0)	0 (0)	0 (0)	2 (1)
May	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
June	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
July	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
August	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
September	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
Total	46 (36)	2 (2)	29 (10)	4 (7)	10 (17)	36 (26)	5 (10)	4 (0)	0 (0)	8 (5)

(numbers in parentheses for the same period last year)

Total Number of Incidents Per Field Office this Period:

1	2	3	4	5	6
0	0	0	3	1	0

Environmental Services Division
Report of Hazardous Conditions

During the period April 1, 2007, through April 30, 2007, 69 reports of hazardous conditions were forwarded to the central office. A general summary and count by field office is presented below. This does not include releases from underground storage tanks, which are reported separately.

Month	Total Incidents	Substance				Mode				
		Agri-chemical	Petroleum Products	Other Chemicals	Transport	Fixed	Pipeline	Railroad	Fire	Other* Facility
October	52 (48)	5 (6)	34 (29)	12 (13)	14 (13)	29 (28)	0 (0)	3 (2)	2 (1)	4 (4)
November	60 (55)	13 (10)	30 (35)	17 (10)	19 (16)	27 (28)	2 (0)	4 (3)	1 (1)	7 (7)
December	28 (51)	3 (5)	20 (32)	5 (14)	5 (18)	18 (29)	0 (2)	2 (1)	0 (0)	3 (1)
January	36 (62)	4 (4)	20 (35)	12 (23)	10 (18)	19 (32)	3 (0)	1 (1)	0 (0)	3 (11)
February	50 (49)	6 (2)	38 (36)	6 (11)	7 (10)	35 (35)	1 (1)	3 (2)	0 (0)	4 (1)
March	70 (54)	5 (2)	52 (40)	13 (12)	19 (16)	44 (29)	0 (2)	0 (2)	0 (0)	7 (5)
April	69 (96)	21 (32)	30 (39)	18 (25)	22 (26)	39 (56)	1 (1)	0 (3)	1 (1)	6 (9)
May	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
June	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
July	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
August	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
September	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
Total	365 (415)	57 (61)	224 (246)	83 (108)	96 (117)	211 (237)	7 (6)	13 (14)	4 (3)	34 (38)

(numbers in parentheses for same period last year)

Total Number of Incidents Per Field Office this Period:

*Other includes dumping, theft, vandalism and unknown

1	2	3	4	5	6
14	18	10	8	15	4

Environmental Services Report of WW By-passes

During the period April 1, 2007 through April 30, 2007, 22 reports of wastewater by-passes were received. A general summary and count by field office is presented below. This does not include by-passes resulting from precipitation events.

Month	Total	Avg. Length (days)	Avg. Volume (MGD)	Sampling Required	Fish Kill
October '06	3(11)	0.427	0.055	1	0(0)
November '06	3(7)	0.063	0.033	2	0(0)
December '06	11(7)	0.862	0.016	1	0(0)
January '07	7(10)	0.213	0.004	1	0(0)
February '07	34(6)	0.386	0.070	6	0(0)
March '07	14(12)	0.162	0.011	3	0(0)
April '07	22(12)	0.393	0.068	5	0(0)
May '06	11(18)	0.135	0.004	3	0(0)
June '06	9(7)	0.342	0.076	5	0(0)
July '06	9(5)	0.078	0.003	2	0(0)
August '06	15(13)	0.196	0.023	8	0(0)
September '06	9(3)	0.285	0.024	0	0(0)

(numbers in parentheses for same period last year)

Total Number of Incidents Per Field Office This Period:

1	2	3	4	5	6
8	2	0	2	4	6

Date Rcvd	Name of Case	F O	Action Appealed	Program	Assigned to	Status
4/26/99	Gerald and Judith Vens	6	Order/Penalty	FP	Clark	4/09/07 – Internal meeting with DNR management set for 4/12/07. 5/09/07 – Clark calls Vens' attorney and extends settlement offer. Attorney agrees to inform client and get back to Dept. with response.
12/01/99	Iowa Select Farms, L.P./AG Waste Consultants, Inc.	2	Order/Penalty	AFO	Clark	4/10/07 – ISF and Dept. attorneys unsuccessful attempt to contact AG

12/08/99						Wastes Consultants attorney.
7/13/00	Dan Witt	6	Order/Penalty	AFO	Clark	1/10/07 – FO6 staff visited the site to determine the current status and observed that the AFO portion of the farm operations has been closed. 4/07 Sent request for hearing.
10/02/01	Daryl Larson	6	Order	AFO	Clark	Negotiating before filing.
11/27/01	Dallas County Care Facility	5	Order/Penalty	WW	Hansen	10/03 – Letter to County attorney regarding appeal resolution. 1/04 – Letter to attorney regarding appeal. 4/04 – Dept. letter to attorney regarding appeal. 9/04 – Dept. letter to attorney regarding appeal.
1/23/02	Clearview Mobile Home Park	6	Permit Conditions	WW	Hansen	10/31/02 – Construction permit issued for improvement to lagoon system. 10/31/03 – Update on construction project requested from Dept. engineer. 1/30/04 – Status report requested from Dept. staff. 2/24/04 – Letter sent to attorney regarding resolving appeal. 3/15/04 – Letter from facility attorney regarding proposed upgrade with sand filters. 4/26/04 – Dept. letter to MHP attorney requesting construction schedule for project. 5/17/04 – Letter from MHP attorney with new schedule. 10/18/06 – Letter to attorney regarding schedule for resolving appeal. 10/06 – Letter to MHP attorney regarding resolution of appeal. 11/06 – Letter from MHP attorney regarding projects on hold due to revisions in WQ standards rules.
7/18/02	Mt. Pleasant, City of	6	Order/Penalty	WW	Hansen	\$500 penalty payment received for uncontested portion. 12/03 – Dept. letter with settlement offer. 1/30/04 – Dept. letter sent regarding settlement. 2/24/04 & 3/31/04 – Follow-up letters sent regarding settlement. 4/26/04 – Letter received from City attorney regarding Dept. settlement proposal.
7/23/02	Doug Wedemeyer	4	Order/Penalty	AFO	Clark*	4/4/07 – FO4 provides status update.
8/25/02	Kenneth Dahlhauser	2	Order/Penalty	AFO	Clark	1/4/07 - An offer to settle was sent to Mr. Dahlhauser's attorney. This letter gave Mr. Dahlhauser until 1/26/07 to contact Carrie Schoenebaum with regard to the settlement. Attorney called and asked for extended time to review. She will call back. Dahlhauser attorney agrees to settlement. Will send signed consent order.
11/27/0	Chelsea, City of	5	Order/Penalty	WW	Hansen*	9/18/03 – DNR letter. Will monitor

2						for compliance through winter of 2004. 4/07 – FO5 to conduct compliance inspection. 4/19/07 - Inspection report issued to facility. 5/07 - Letter to City regarding resolution of appeal.
2/10/03	Doug Osweiler	6	Order/Penalty	AFO	Clark	4/07 Waiting to hear from attorney on DNR's offer.
2/24/03	Ray Slach	6	Order/Penalty	AFO	Clark	4/29/04 – Settlement invitation letter sent.
4/04/03	Natural Pork Production II, LLP (03-AFO-13)	6	Order/Penalty	AFO	Clark*	3/10/07 – Attorney for NPPII responds to DNR's inquiry, indicating that he will get with client and then back with DNR in next week. 4/10/07 – Clark leaves message for NPPII attorney, asking for status update. 4/10/07 – After Clark leaves message for NPPII attorney, asking for status update, NPPII attorney indicates his client asserts case should be dismissed. 5/9/07 – Dept. refuses to dismiss case and counters with reduced penalty offer.
4/25/03	Ag Processing Inc.	2	Permit Conditions	AQ	Preziosi	Continuing to negotiate.
8/12/03	Southern Waste Handling, Inc.	5	Order/Penalty	AFO	Clark	3/17/07 – Consent Amendment to Order issued. 4/18/07 – Penalty paid. Case closed.
8/29/03	Country Living Mobile Home Park	5	Order/Penalty	WW	Hansen	6/23/04 – Construction permit issued. Settlement offer will be made. 9/04 – Status report from Dept. engineer requested regarding project construction status. 10/05 – Status report requested from Dept. engineer. 11/05 – Facility upgrade completed. New NPDES permit requested for upgraded facility. 12/16/05 – Settlement offer received from MHP attorney. 5/07- letter to MHP attorney about appeal and setting for hearing.
9/05/03	Strawberry Point, City of	1	Order/Penalty	WW	Hansen*	1/5/04 – City to upgrade facilities, compliance will be monitored through 2005. 4/07 – Letter to City regarding appeal. . 4/25/07 - Response from City Attorney. 5/11/07- Dept. offer of settlement.
10/08/03	TEGH, Inc. (03-UT-15)	6	Order/Penalty	UT	Wornson	TEGH, Inc. no longer operator; questionable as a viable corporation. Review options.
10/27/03	B & H Food & Gas, Inc. (03-UT-12)	6	Order/Penalty	UT	Wornson	B & H no longer operator; questionable as a viable corporation. Review options.
10/27/03	U.S. Nation Mart, Inc. (03-UT-14)	6	Order/Penalty	UT	Wornson	Proposed consent order drafted.
12/02/03	Jeff Holland	2	Order/Penalty	AFO	Clark	Negotiating before filing.
12/15/03	AGP (Emmetsburg)	3	Permit Conditions	AQ	Preziosi	Continuing to negotiate.

12/29/03	T. Patrick Cashman; Laurie Cashman	5	Order/Penalty	AFO	Clark	Consent amendment to Order issued 3/07/07. 4/10/07 – Penalty paid. Case closed.
1/21/04	Bob Kerrigan	4	Order/Penalty	AFO	Clark	Negotiating before filing.
1/30/04	John Schmall d/b/a Carpenter Bar & Grill	2	Order/Penalty	WS	Hansen	2/26/04 – Letter to WS attorney regarding resolving appeal. 9/04 – Per WS section, facility has returned to compliance. 11/06 – Facility building burned down, facility closed. . 5/07- Dept. letter to attorney about resolving appeal.
2/09/04	Swine USA, LP	5	Order/Penalty	AFO	Clark	2/2/07 – Draft Consent Order sent to attorney for new owner.
2/16/04	Iowa Ethanol, LLC; Reilly Construction Co., Inc.	2	Order/Penalty	WW	Clark*	Meeting held 4/07/04.
2/17/04	Broin & Assoc., Inc. aka Otter Creek Ethanol, LLC	3	Order/Penalty	WW	Clark*	Meeting held 4/07/04.
2/17/04	Broin & Assoc., Inc. aka Iowa Ethanol, LLC	2	Order/Penalty	WS/W W	Clark*	Meeting held 4/07/04.
2/18/04	Gettler Dairy, Inc.; Dave and Kristen Gettler	4	Order/Penalty	AFO	Clark	4/4/07 – FO4 agrees to perform a site visit to verify remedial work. 5/2/07 – FO4 visits site and reports observations.
3/15/04	Iowa Falls, City of	2	Order/Penalty	WW	Hansen	6/04 – Dept. letter to City attorney regarding settlement. 8/06 – Letter from City attorney regarding resolving appeal. 10/06 – Letter to City attorney regarding settlement and setting case for hearing. 11/06 – Response received from City attorney concerning SEP proposal. 1/07 – Settlement proposal (SEP) received from City attorney; under review by Dept. staff. 3/07 – Settled. City to pay penalty of \$2,500 and perform SEP in an amount of \$10,250. 3/26/07 – Draft consent order sent to City attorney on 3/26/07. 4/2/07 – Consent order signed by City. 4/2/07 – Consent order signed by City. Order signed by Director, issued. Penalty paid 5/15/07. Case closed.
4/02/04	LeMars, City of	3	Order/Penalty	WW	Hansen	4/02/04 – Meeting held to discuss settlement. 1/05 – Tentative agreement reached on settlement.
4/08/04	Silver Creek Feeders	4	Permit Conditions	AFO	Clark	Negotiating before filing.
4/16/04	Ag Processing Inc. (Sheldon)	3	Permit Conditions	AQ	Preziosi	Continuing to negotiate.
5/12/04	Ag Processing, Inc.	3	Permit Conditions	AQ	Preziosi	Continuing to negotiate.
5/18/04	Alton, City of	3	Order/Penalty	FP	Clark	3/15/07: Attorney for Alton returned Dept. phone call and agreed to check with client regarding settlement offer. 5/08/07 - Dept. called Attorney for Alton. Settlement offer delayed due to change in Alton administration. Will submit offer to DNR by 5/18/07.
5/25/04	CDI, LLC	6	Permit Conditions	AQ	Preziosi	ALJ Proposed Decision issued

						12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting.
5/27/04	CDI – Charles City	2	Permit Conditions	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting.
6/11/04	University of Iowa	6	NPDES Permit	WW	Hansen	Negotiating before filing.
6/18/04	CDI – Charles City	2	Title V Permit Determination	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting.
6/18/04	Phillip Renze	3	Order/Penalty	AFO	Clark	3/22/07 – Dept. sends draft consent amendment to Renze's attorney. 5/10/07 – Dept. calls Renze's attorney for status update; attorney apologizes for delay and commits to providing a response in 24 hours. As of noon, 5/14/07 Dept. has not received a response.
6/24/04	Jansma Cattle Co., Inc.	3	Order/Penalty	AFO	Tack*	Primary RP died. Current operation received construction permit on 11/06/06. Will be settled when construction is completed.
6/28/04	Michael Veenstra; Alan Veenstra	5	Order/Penalty	AFO	Clark	Negotiating before filing.
10/12/04	Gary Hart	6	Order/Penalty	AQ/SW	Tack	Hearing set for 1/19/07. Hearing continued to May 25, 2007.
10/19/04	Cedar Rapids, City of	1	Order/Penalty	WW	Hansen*	5/07 - Dept. letter to City regarding setting case for hearing.
10/21/04	Eugene Kramer	1	Permit Denial	WR	Clark	3/6/07 – Dept. discusses case with attorney for deceased Mr. Kramer. Potential lawsuit against Kramer can still be filed until 4/6/07, so unwilling to withdraw contested case until that is known. 4/10/07 – Clark leaves message for Kramer's attorney, asking for status update. 5/11/07 – After Clark's call asking for update, Kramer's attorney agrees to talk with Executor of Kramer's estate the week of 5/14/07.
11/02/04	Mike Elsbernd	1	Order/Penalty	AFO	Book	Order and penalty affirmed. Inability to pay claim being evaluated by Department. Offer to reduce penalty rejected, will be turned over to Revenue and Finance
11/10/04	Ted T. Smith	3	Order/Penalty	AFO	Clark	4/10/07 – Clark discusses appeal with Mr. Smith. He will consult with his representatives and decide whether to go to hearing or withdraw appeal.
1/20/05	Monty Branstad	2	Order/Penalty	AQ/SW	Preziosi	Settled. Awaiting penalty payment.
2/04/05	Honey Creek Campground	4	Order/Penalty	WW	Hansen	12/07/05 – Telephone call with Honey Creek attorney regarding hearing and compliance issues. 3/22/06 – Meeting at FO 4 with wastewater owner and attorney.

						4/5/06 – FO4 inspection of campground. 5/12/06 – FO letter to facility regarding inspection. 5/22/06 – Letter received from Honey Creek attorney requesting waiver of penalty in view of inspection. Letter to Honey Creek attorney rejecting request to waive penalty. 4/07 – Letter to Honey Creek regarding penalty and setting for hearing. 5/07 to be sent to DIA.
2/17/05	CDI, LLC	2	Permit Conditions	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting.
2/24/05	Mt. Joy Mobile Home Park	1	Order/Penalty	WW	Hansen	10/06 – Letter to MHP regarding settlement of appeal. 11/06 – Information received from MHP owner regarding MORs and certified operator. 4/07 – Letter to MHP regarding appeal and setting for hearing. 5/07- Settled. Consent order sent to MHP owner to be signed.
3/08/05	Randy Griffin	5	Order/Penalty	AQ/SW	Tack	Settled. Revised consent order sent 1/22/07.
3/25/05	Hoover Land Corp.	2	Order/Penalty	WS	Hansen	Negotiating before filing.
4/04/05	Ruby Field; Ed Grafke	6	Order/Penalty	UT	Wornson	No progress, set for hearing.
4/05/05	Dirk D. Graves	4	Order/Penalty	AQ	Tack	Hearing set for 5/22/07.
5/25/05	Iowa Quality Beef Cooperative	5	Order/Penalty	WW	Hansen	6/26/06 – FO meeting with company officials to discuss reopening of plant. 7/12/06 – FO inspection of plant. 10/06 – To be set for hearing.
8/05/05	Scott Lenz	4	Order/Penalty	AFO	Book	Producer submitted offer, Department reviewing offer. Awaiting decision from producer.
11/21/05	CDI, LLC	2	Construction Permit	AQ	Preziosi	ALJ Proposed Decision issued 12/29-06 and appealed. Appeal will be addressed at April 2007 EPC meeting.
2/27/06	Greig & Co., Inc.	3	NPDES Permit	WW	Clark	Negotiating before filing.
3/28/06	Jordan Branstad; Edward Branstad	2	Order/Penalty	AQ/SW	Preziosi	Settled. Awaiting penalty payment.
4/10/06	Praxair, Inc.		Permit Conditions	AQ	Preziosi	Negotiating.
7/07/06	Washington County (Permittee: Riverside Casino)	6	Water Use Permit	WR	Clark	Negotiating before filing.
8/09/06	Cargill (Eddyville)	5	Permit Conditions	AQ	Preziosi	Waiting to hear from Cargill engineer. Meeting will be set with technical staff.
8/28/06	Winnebago Industries, Inc.	2	Title V Permit	AQ	Preziosi	ALJ Proposed Decision issued 12/29/06 and appealed. Appeal will be addressed at April 2007 EPC meeting.
10/06/06	Ted Dickey dba Dickey Farms	6	Order/Penalty	AQ/SW /AFO	Book	Meeting to be held April 2007. Waiting to hear from attorney as to a meeting.
12/27/06	Piper Motor Co. Inc.	6	Order/Penalty	AQ/W W	Tack	Reviewing discovery responses.

1/08/07	Cargill (Eddyville) 02-A-393-S3, 02-A-394-S2, 02-A-395-S2, 02-396-S3, 05-A-930, 05-A-931	5	Permit Conditions	AQ	Preziosi	Negotiating before filing.
1/09/07	Charlie Van Meter; Van Meter Feedyard	5	Permit Conditions	WW	Clark	Negotiating before filing.
1/11/07	Clow Valve Company (20 Permits)	5	Permit Conditions	AQ	Preziosi	Negotiating before filing.
5/11/07	Bedrock Gravel	3	Order/Penalty	AQ\SW	Tack	Negotiating before filing.

DATE: June 1, 2007

TO: EPC

FROM: Ed Tormey

RE: Enforcement Report Update

The following new enforcement actions were taken during this reporting period:

Name, Location and Field Office Number	Program	Alleged Violation	Action	Date
Independence, City of	Air Quality	Open Burning	Consent Order \$8,000	4/10/07
Ottumwa Wapello Solid Waste Commission, Ottumwa (6)	Solid Waste	Compliance Schedule	Consent Amendment	4/10/07
Iowa Falls, City of	Wastewater	Operational Violations; Prohibited Discharge	Consent Amendment SEP	4/15/07
Craig Hancock; Country Estates, Council Bluffs (4)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Consent Order \$3,000	4/24/07
Bedrock Gravel, Inc., Buena Vista Co. (3)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Admin. Order \$10,000	4/24/07
Rahn Eischeid, Carroll Co. (4)	Animal Feeding Operation	Prohibited Discharge – Open Feedlot; WQ Violations – General Criteria	Consent Order \$5,000	4/28/07
U.S. Nation Mart, Inc.; Ved Pal; Babli Saini, Davenport (6)	Underground Tanks	Leak Detection; UST System Deficiencies	Referred to Attorney General	5/01/07
Great River Regional Waste Authority, Des Moines Co. (6)	Solid Waste	Comprehensive Planning Violations	Consent Order	5/02/07
Randy Griffin, Jasper Co. (5)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Consent Amendment \$500	5/02/07
Jewell Implement Co., Jewell (2)	Air Quality Solid Waste	Open Burning; Illegal Disposal	Consent Order \$1,000	5/07/07

Goldsmith and Son, Inc.; John Goldsmith; Patti Goldsmith; J&G Pallet, LLC, Sergeant Bluff (3)	Wastewater	Prohibited Discharge	Admin. Order \$10,000	5/04/07
Crossroads Cattle Co., Harrison Co. (4)	Animal Feeding Operation	Prohibited Discharge – Open Feedlot; WQ Violations – General Criteria	Consent Order \$9,500	5/14/07
Gary Rupiper, Carroll Co. (4)	Animal Feeding Operation	Prohibited Discharge – Open Feedlot; WQ Violations – General Criteria	Consent Order \$8,000	5/14/07
Industrial Laminates/Norplex, Postville (3)	Air Quality	Construction Without Permit; Monitoring/Reporting	Consent Order \$3,750	5/14/07
Jones County; Unincorporated Fairview (1)	Wastewater	Prohibited Discharge	Consent Order Stip. Penalties	5/14/07
Manning, City of (4)	Wastewater	Compliance Schedule; Discharge Limits	Consent Amendment Stip. Penalties	5/14/07

Rulemaking

Proposal	Notice to Commish	Notice Published	ARC#	Rules Review Committee	Hearing	Comment Period	Final Summary to Commish	Rules Adopted	Rules Published	ARC#	Rules Review	Rule Effective
1. Ch. 7 – Contested Case Rules	5/01/07	*5/23/07		*6/04/07		*6/12/07	*7/03/07	*7/03/07	*8/01/07		9/03/07	*9/05/07
2. Ch. 22 – Air Construction Permit Exemptions	1/02/07	1/31/07	5694B	2/06/07	3/05/07	3/09/07	5/01/07	5/01/07	*5/23/07		*6/04/07	*6/27/07
3. Ch. 22 – Special Requirements for Visibility Protection	1/02/07	1/31/07	5695B	2/06/07	3/02/07	3/05/07	5/01/07	5/01/07	*5/23/07		*6/04/07	*6/27/07
4. Ch. 40, 43 – Minor Water Main Construction Permit	3/06/07	3/28/07	5795B	4/03/07	4/19/07	4/20/07	*7/03/07	*7/03/07	*8/01/07		*9/03/07	*9/05/07
5. Ch. 61 – WQS Section 401 Certification of Section 404 NWP	11/14/06	12/06/06	5598B	1/03/07	12/26/06	12/26/06	4/03/07	4/03/07	4/25/07	5851B	5/07/07	5/30/07
6. Ch. 61 – WQS – Chemical Criteria Revisions	5/01/07	*5/23/07		*6/04/07	6/14, 19, 21 and 26/07	*7/10/07	*8/06/07	*8/06/07	*8/29/07		*9/05/07	*10/03/07
7. Ch. 64 – Wastewater Construction and Operation Permits	2/06/07	2/28/06	5753B	4/03/07	3/30/07	3/30/07	6/05/07	*6/05/07	*7/04/07		*8/06/07	*8/08/07
8. Ch. 93 – Nonpoint Source Pollution Control Set-Aside Program	5/01/07	*5/23/07		*6/04/07	*6/14/07	*6/21/07	*8/06/07	*8/06/07	*8/29/07		*9/05/07	*10/03/07
9. Ch. 103-106, 112, 114, 115, 118, 120-123 – Financial Assurance Regulations	12/05/06	1/03/06	5633B	2/06/07	3/28/07	3/28/07	*7/03/07	*7/03/07	*8/01/07		*9/03/07	*9/05/07
10. Ch. 113 – Sanitary Landfills for Municipal SW: Groundwater Protection Systems	11/14/06	12/06/06	5597B	1/03/07	1/22, 24 and 26/07	1/26/07	6/05/07	*6/05/07	*7/04/07		*8/06/07	*8/08/07

for the Disposal of Non-Hazardous Wastes												
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NEXT MEETING DATES

Monday, July 2, 2007 DNR Air Quality Office - Urbandale

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Darrell Hanson adjourned the meeting at 5:40 p.m., Tuesday, June 5, 2007.

Richard A. Leopold, Director

Darrell Hanson, Chair

Suzanne Morrow, Secretary

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